

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO.: A-3840-24

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JONATHAN HAGEL,  
MICHELE DOWNIE,  
CATHERINE READ,

Plaintiffs-Appellants,

v.

NEW JERSEY STATE  
POLICE,

Defendant-Respondent.

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:  
: CIVIL ACTION  
:  
: ON APPEAL FROM  
: SUPERIOR COURT OF NEW JERSEY  
: LAW DIVISION - MERCER COUNTY,  
: MER-L-890-25  
:  
: SAT BELOW:  
: Honorable Robert Lougy, A.J.S.C.

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**RESPONDENTS' BRIEF IN OPPOSITION TO APPEAL**  
**Date Submitted: April 20, 2026**

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### **PRELIMINARY STATEMENT**

Appellants, Jonathan Hagel, Michele Downie, and Catherine Read, believe the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1 to -13, and the common law right of access entitle them to perform forensic testing on historic items related to the kidnapping of Charles A. Lindbergh Jr. But neither source of law grants such extraordinary relief.

OPRA governs access to government records for purposes of inspection, copying, or examination. The plain dictionary meanings of “inspection, copying, [and] examination” do not contemplate testing. Appellants ask the Court to look beyond the plain text to find a right to conduct forensic testing, but can provide no legal basis to justify that novel reading. That failure is unsurprising because OPRA’s overriding purpose is to ensure government transparency and an informed citizenry on public matters, it is not to facilitate research through the on-demand unfettered private testing of historical physical evidence.

Appellants also offer no legal support to find that the common law right of access includes the right to perform testing on a public record. But, even if it did exist, the Division of New Jersey State Police’s interest in preserving historical treasures for the public’s benefit significantly outweighs any interest put forth by Appellants.

Faced with that dearth of legal support, Appellants cling to Governor Byrne's Executive Order 110 for the novel proposition that they, and presumably every other member of the public, created a right to conduct forensic experiments on historic items in the Lindbergh Archive. That reliance is misguided because the limited purpose of the order was to make the Lindbergh Archive – which was otherwise exempt from public access – subject to inspection, examination, and copying while protecting against any risk of damage or mutilation. It was not intended to provide unbridled public access that could subject historical items to invasive or chemical testing.

In short, neither OPRA nor the common law provide an entitlement to subject the State's historical items to forensic testing. The trial court properly rejected Appellants' arguments to the contrary and this Court should affirm.

### **PROCEDURAL HISTORY AND COUNTERSTATEMENT OF FACTS<sup>1</sup>**

Appellants appeal the trial court's July 7, 2025 decision denying their unprecedented requests to manipulate and test historical items relating to the March 1, 1932 kidnapping of Charles A. Lindbergh, Jr. under both the Open

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<sup>1</sup> The procedural history and counterstatement of facts are inextricably intertwined and have been combined for the court's convenience.

Public Records Act (OPRA), N.J.S.A. 47:1A-1 to -13, and the common law right of access. (Pa251-264.)<sup>2</sup>

**A. The New Jersey State Police Museum and Lindbergh Archive**

The kidnapping of Charles A. Lindbergh, Jr. is one of the most notorious cases in New Jersey’s and our country’s history. See FBI, Lindbergh Kidnapping, [[fbi.gov/history/famous-cases/lindbergh-kidnapping](https://www.fbi.gov/history/famous-cases/lindbergh-kidnapping)] (last visited April 20, 2026).<sup>3</sup> The case drew extraordinary national attention extending beyond the NJSP to nearly every major law enforcement agency, after President Roosevelt directed all government agencies to assist NJSP. See ibid. Public interest in the kidnapping of Charles A. Lindbergh, Jr. persisted for decades following the conclusion of the investigation.

The New Jersey State Police Museum & Learning Center is located at the Division of the New Jersey State Police (NJSP) headquarters and is the repository of NJSP’s historical records and artifacts. (Pa214-215.) The Museum contains approximately 225,000 records in its archive of items related to the kidnapping of Charles A. Lindbergh Jr. from 1932 (Lindbergh Archive). (Pa215.) As the custodian, NJSP preserves several historical items in the

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<sup>2</sup> “Pa” refers to Appellants’ Appendix; “Pb” refers to Appellants’ brief; and “Ra” refers to Respondent’s appendix.

<sup>3</sup> Web addresses throughout this brief have been modified by excluding the leading “www.” to disable all hyperlinks. Such omissions are represented by empty brackets (“[ ]”).

Lindbergh Archive including correspondences, photographs, investigation files, reports, and trial evidence. Ibid.

Decades after the kidnapping, the Right to Know Law<sup>4</sup> prohibited public access to the criminal investigatory files. L. 1963, c.73; see also Executive Order 9 (Hughes 1963) (providing that fingerprint cards, plates, and photographs and other similar criminal investigation records are not deemed public records subject to inspection); Executive Order 48 (Hughes 1968) (prohibiting disclosure of State Police investigation files from public access). To accommodate the sustained public interest in the subject, then-Governor Brendan Byrne issued Executive Order 110 (Byrne 1981) (“E.O. 110”). He acknowledged that the “Lindbergh case was and continues to be of extraordinary interest to the legal community and public at large.” Ibid. E.O. 110, therefore, directed the Superintendent of State Police to make the Lindbergh Archive “available to the public, and subject to inspection and examination and available for copying.” Ibid. (noting in the Executive Order’s preambles the various provisions barring release and noting Governor Byrne’s intent to grant relief from same).

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<sup>4</sup> In 2002, the Legislature enacted OPRA which amended the former Right to Know Law. See Gilleran v. Bloomfield, 227 N.J. 159, 184 n.6 (2016) (noting that OPRA “significantly altered and expanded upon the Right to Know Law”). The Right to Know Law exemption for criminal investigatory records remains intact under OPRA.

In effect, Governor Byrne exempted the Lindbergh Archive from confidentiality provisions that otherwise shielded NJSP investigative records and provided public access to those records coextensive with that provided under the Right to Know Law. Ibid. Consistent with that narrow purpose, the Executive Order made the Lindbergh Archive subject to inspection, copying, and examination like all other accessible public records at the time. Ibid.

Recognizing the unique historical significance of the investigation records, Governor Byrne imposed explicit safeguards to ensure the preservation of Lindbergh Archive. While referencing "P.L. 1963, c.73", the Right to Know Law, Governor Byrne expressly “empowered” the Superintendent to “establish procedures to insure [sic] that there is no risk of damage or mutilation of such files, records and exhibits.” Id. at § 2 (emphasis added). In doing so, Governor Byrne granted the public the same access available under the Right to Know Law, but empowered the Superintendent to take additional measures to protect the record artifacts from the “risk of damage or mutilation” and to ensure continued public access. Ibid. As a result, the public has been able to view and enjoy the records in their original condition for generations.

Consistent with the original intent of the Executive Order, NJSP follows generally accepted archival standards to protect the Lindbergh Archive against damage or mutilation. (Pa216.) The Museum maintains the trial materials in a

“locked, temperature and humidity-controlled room which is always actively monitored and secured.” Ibid. Moreover, to facilitate public viewing while protecting the materials, envelopes and their contents are contained in polyester sleeves, which prevents the transfer of foreign substances —like oils and acids— while permitting individuals to turn the pages of the materials. Ibid. These envelopes and their contents are also placed in acid-free manuscript folders which are then stored in standard acid-free board archival boxes. Ibid. Such protective measures are taken to reduce exposure to foreign substances and atmospheric pollutants. Ibid.

NJSP places safeguards when fielding requests for direct access to all historical items. Researchers may directly view Museum historical items—including the Lindbergh Archive—by appointment. (Pa215-216.) All such appointments are directly supervised by the Museum’s archivist, who may impose additional precautions depending on the item involved. Ibid. Significantly, researchers are never allowed to expose historical items to foreign chemicals or substances, or otherwise alter their condition. Ibid. Notwithstanding the restrictions, researchers may submit proposals for research testing for consideration by the Office of NJSP Superintendent. Ibid. Such proposals provide a “constructive opportunity to establish to the Superintendent’s satisfaction that the [proposed] techniques and technologies

[requestors] seek to employ are consistent with generally accepted archival standards.” (Pa263-Pa264.)

As Appellants acknowledge, researchers’ access to the Lindbergh Archive was temporarily limited because NJSP created new security protocols to further protect the trial materials. Specifically, starting on April 4, 2024, NJSP limited researchers’ access to the Lindbergh trial materials while it updated security measures and protocols. (Pa216.) These updates included creating a new location to view the Lindbergh trial files and limiting the researchers’ access to the archival area and other files stored in such area. Ibid. Once the new security protocols were implemented, researchers were once again permitted to access the Lindbergh Archive by appointment. Ibid.

## **B. OPRA Requests**

In February and March 2025, Appellants submitted separate OPRA requests to NJSP for various pieces of evidence regarding the kidnapping, such as stamps and envelopes used in the ransom. (Pa104; Pa110; Pa116.) Hagel’s request emphasized the historical importance of the Lindbergh kidnapping case and asked to make “the evidence of this case available to further scrutiny.” (Pa104.) Specifically, Hagel sought to conduct “DNA testing of the ransom letter . . . to clarify lingering questions about the case, reaffirm or challenge past

conclusions, and ultimately contribute to a fuller, more accurate account of our collective past.” Ibid.

Downie and Read submitted similar requests. (Pa110; Pa116.) Downie requested that “the information contained on the backs of the stamps and seals of the envelopes be forensically tested,” asserting that NJSP conduct these forensic tests because “DNA testing and the evidence it holds relevant to solving some of history’s greatest stories.” (Pa110.) She further asked that she and the “forensic experts that [she had] become acquainted with” be permitted to “come to the NJ State Police Museum to perform forensic testing in a non-destructive manner on camera of the stamps and envelopes.” Ibid.

Read likewise expressed interest in the Lindbergh kidnapping but did not request any records. (Pa116.) Instead, she sought permission for “a group of forensic experts” to conduct “non-destructive tests on the stamps and envelopes to learn whose DNA information” might be present on the historical items. Ibid. Read believed that her request could “uncover” who sent the “envelopes to Charles Lindbergh and his intermediaries” and potentially “correct a historical injustice.” Ibid.

NJSP denied each Appellants’ request. (Pa104; Pa110; Pa116.) NJSP advised that to the extent Hagel and Read were requesting information, OPRA only permits requests for identifiable records and not information. (Pa104;

Pa116.) NJSP also denied the requests submitted by Downie and Read because OPRA does not provide for DNA testing or other forensic manipulation of records. (Pa110; Pa116.) In support of its denial, NJSP relied on a prior trial court ruling—Sudhakar v. NJSP, et al., MER-L-1706-22 (Jan. 5, 2023), aff'd, No. A-1764-22 (App. Div. Dec. 23, 2024) (affirming the trial court's decision on procedural grounds)<sup>5</sup>—which denied another plaintiff's OPRA and common law requests to conduct DNA testing on the Lindbergh Archive on both procedural and substantive grounds. (Pa110; Pa116; Pa221-236.)

### **C. The Complaint and Subsequent Submissions**

Following NJSP's denials, Appellants filed a Verified Complaint and Order to Show Cause alleging that NJSP violated OPRA and the common law right of access by refusing to permit forensic testing on the Lindbergh Archive. (Pa1-206.) Appellants sought to compel NJSP to allow DNA testing on the backflaps of certain envelopes and stamps. (Pa32-37.) Specifically, Appellants

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<sup>5</sup> In Sudhakar, the plaintiff similarly sought to conduct DNA tests on envelopes, stamps, and other items from the Lindbergh Archive. Appellants' counsel represented the plaintiff in that matter as well. There, in addition to the procedural deficiencies, Judge Lougy found that DNA testing is not a records request under OPRA. (Pa234.) Judge Lougy also found that such testing was not permitted under the common law right of access because altering or destroying records did not serve the overarching goal of transparency. (Pa235.) The Appellate Division subsequently affirmed that ruling in Sudhakar v. NJSP, No. A-1764-22 (App. Div. Dec. 23, 2024), on procedural grounds and did not address the merits. (Pa238-248.)

proposed altering several historical items by conducting DNA tests “from underneath the backflaps of thirteen (13) ransom envelopes . . . , underneath the ten (10) stamps . . . on seven (7) of those envelopes, and underneath the backflaps . . . and stamps . . . of both the ‘Begg letter’ and the letter that Bruno Richard Hauptmann sent to Pinkas Fisch.” (Pa6.)

In support, Appellants submitted statements from Colleen Fitzpatrick, PhD (President of Identifinders International LLC), Danny Hellwig (CEO of Resolve Forensics) and Dr. Angelique Corthals (Associate Professor at City University of New York – John Jay College of Criminal Justice) who proposed opening envelope flaps, removing and replacing stamps, swabbing surfaces, and otherwise physically manipulating the archival materials. See (Pa80) (recommending opening flaps and removing stamps to obtain DNA samples); (Pa93) (proposing extraction from sealed interior flaps or undersides of affixed stamps); (Pa149-150) (proposing dry swabbing, use of “ESDA®-Lite” swabs, and gentle vacuuming).

Appellants later moved to call witnesses to further explain the proposed DNA testing methods and to answer questions. (Pa207-208.) Appellants asserted that such “witnesses” would support their claim that OPRA and the common law give them a right to conduct DNA tests on items in the Lindbergh Archive. Ibid. The trial court denied the motion, finding no good cause to

conduct a plenary hearing on those questions. (Pa212.) As the court explained, OPRA actions are summary proceedings and testimony regarding the DNA testing would be irrelevant to answer the purely legal questions presented; namely, whether NJSP violated OPRA or the common law when it denied Appellants' request to subject historical items to forensic testing. (Pa212-213.) Accordingly, on June 6, 2025, the trial court denied Appellants' motion. (Pa209-213.)

#### **D. The Trial Court's Decision**

On July 7, 2025, the Honorable Robert Lougy, A.J.S.C., denied Appellants' Order to Show Cause, and dismissed the verified complaint with prejudice. (Pa251-264.) Judge Lougy held that Appellants "have no legal right under either OPRA or the common law right to access . . . to engage in" DNA testing of the Lindbergh Archive. (Pa252-253.) He further found that "OPRA does not contemplate DNA testing or other scientific manipulation of records" because, "[e]xpanding the definitions of inspection and examination . . . and interpreting OPRA in such a way to allow DNA testing would lead to absurd results as individuals could then subject any government record to testing and analysis." (Pa261.)

What's more, the trial court noted that E.O. 110 did not expand their rights under OPRA beyond those applicable to any other disclosable government

record. (Pa261-262.) It recognized that E.O. 110 merely “exempted the Lindbergh archive from the criminal investigatory exemptions to the Right to Know Law” but expressly limited the public’s access to inspection, examination, and copying. (Pa262.) To safeguard that access, the trial judge correctly highlighted that E.O. 110 required the Superintendent to “insure [sic] that there is no risk of damage or mutilation of such files records and exhibits.” Ibid.

With respect to Appellants’ reliance on the common law, the trial court appropriately found that NJSP’s interest in preserving the integrity of the Lindbergh Archive far outweighed any interest put forth by Appellants. Ibid. Although Appellants’ experts focused on purportedly nondestructive testing methodologies, the trial court noted that it would still require physical manipulation of envelope flaps and stamps which could result in permanent alterations of the Archive items. (Pa262-263.) Such manipulation would conflict with E.O. 110 and undermine the public’s interest in preserving access to these items in their unaltered, original state. (Pa263.) Ultimately, the trial court held that “nothing in OPRA, [the common law right to access], or EO 110 grant[ed]” it “the authority to compel NJSP to allow the extra-statutory testing, manipulation, and alteration of archival records” sought by Appellants. Ibid.

This appeal followed.

## **ARGUMENTS**

### **POINT I**

#### **OPRA DOES NOT AUTHORIZE THE FORENSIC TESTING OF GOVERNMENT RECORDS. (RESPONDING TO APPELLANTS' POINTS I, II, VII, VIII.)**

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OPRA does not confer a public right to conduct forensic testing or otherwise manipulate government records. Although OPRA allows public access for inspection, copying, or examination, it does not permit the scientific testing of records and the alterations that such invasive testing would entail. Expanding OPRA to allow such activity would create a right not contemplated by OPRA's plain terms and far exceed the Act's purpose of promoting transparency into the government's operations. Therefore, this Court should affirm the trial court's dismissal of Appellants' complaint.

OPRA provides that "government records shall be readily accessible for inspection, copying, or examination." N.J.S.A. 47:1A-1. A "government record" is defined as any paper, book, or document "maintained or kept on file in the course of official business by any officer, commission, agency, or authority of the State or of any political subdivision thereof." N.J.S.A. 47:1A-1.1. Appellants' arguments here raise a question of statutory interpretation about what the Legislature intended by its use of the words "inspection, copying, or examination."

Such questions and the “trial court's determinations with respect to the applicability of OPRA are legal conclusions subject to de novo review.” N. Jersey Media Grp., Inc. v. State, Office of Governor, 451 N.J. Super. 282, 301 (App. Div. 2017); O’Shea v. Twp. of W. Milford, 410 N.J. Super. 371, 379 (App. Div. 2009).

“The Legislature's intent is the paramount goal when interpreting a statute and, generally, the best indicator of that intent is the statutory language.” DiProspero v. Penn, 183 N.J. 477, 492 (2005). Courts are thus bound to the statutory words’ ordinary meaning when the language is clear and unambiguous. Ibid.

Appellants’ claims rest on the flawed presumption that the terms “inspection, copying, or examination” in OPRA includes forensic testing. (See Pb8-12.) But that reading violates the first rule of interpretation that courts “ascribe to the statutory words their ordinary meaning and significance.” DiProspero, 183 N.J. at 492 (internal citations omitted).

“Inspection” means “[a] careful examination of something,” “copying” means “[t]he duplication of an original thing” and “examination” means “[a] close look at a person or thing to determine its condition.” Black’s Law Dictionary 424, 704, and 950 (11th ed. 2019). Those definitions exclude the inherently invasive nature of forensic testing which entails the manipulation and

potentially permanent alteration of records. (Pa261.) Because nothing in the plain text of OPRA contemplates or permits forensic or DNA testing it is unsurprising that even Appellants are forced to concede that no case law supports the proposition that OPRA authorizes DNA testing, manipulation, or alteration of government records. (Pa25–26; Pa261; Pb8–12.)

Because the “plain language leads to a clear and unambiguous result” the “interpretive process is over” and this Court should affirm the result below on that basis alone. Richardson v. Bd. of Trustees, Police and Firemen’s Retirement Sys., 192 N.J. 189, 195-96 (2007); see also DiProspero, 183 N.J. at 492 (“It is not the function of this Court to “rewrite a plainly-written enactment of the Legislature [ ] or presume that the Legislature intended something other than that expressed by way of the plain language.”) (citation omitted).

However, even if there are any lingering questions about whether OPRA envisions forensic testing, the overarching purpose of the Act resolves them. At its core, OPRA is designed to “promote transparency in the operation of government,” Sussex Commons Assocs., LLC v. Rutgers, 210 N.J. 531, 541 (2012), so that “citizens and the media can play a watchful role in curbing wasteful government spending and guarding against corruption and misconduct,” Burnett v. Cnty. of Bergen, 198 N.J. 408, 414 (2009). Appellants offer no explanation of how requiring record custodians to facilitate the forensic

testing of government records would serve the overarching purpose of OPRA. Nor could they. Granting Appellants' request here does nothing to "maximize public knowledge about public affairs" or "to ensure an informed citizenry and to minimize the evils inherent in a secluded process." Mason v. City of Hoboken, 196 N.J. 50, 64-65 (2008) (quoting Asbury Park Press v. Ocean Cty. Prosecutor's Office, 374 N.J. Super. 312, 329 (Law Div. 2004)).

Moreover, subjecting historical records to the invasive testing Appellants demand would hinder, rather than further the public's interest in open government. Accommodating Appellants' requests would not only make the records unavailable during testing, but the testing process itself would physically alter the underlying record and jeopardize the long-term integrity and availability of historically significant government records like the Lindbergh Archive. As the trial court properly found, permitting such manipulation and alteration would also "conflict with NJSP's directive to protect historical items from damage or mutilation" under E.O. 110. (Pa263.)

All access to government records are subject to reasonable limits<sup>6</sup> and courts have expressly recognized that "[t]he private needs of the requesting party

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<sup>6</sup> Significantly, in a recent case, a trial court addressed almost the same requests and ruled that forensic or DNA testing on government records is not permitted under OPRA. Sudhakar v. NJSP, et al., MER-L-1706-22 (January 5, 2023), aff'd, No. A-1764-22 (App. Div. Dec. 23, 2024) (affirming the trial court's

for information in connection with collateral proceedings play no part in whether the request is proper or whether the disclosure is warranted.”. MAG Entm’t, LLC v. Div. of Alcoholic Beverage Control, 375 N.J. Super. 534, 545-46 (App. Div. 2005). See also N. Jersey Media Grp., Inc. v. Bergen Cty. Prosecutor’s Office, 447 N.J. Super. 182, 199 (App. Div. 2016) (rejecting statutory interpretations that would produce outcomes inconsistent with legislative purpose). That principle applies here—Appellants are entitled to access the Lindbergh Archives, but only to the same extent as any other member of the public no more and no less.

For these reasons, this Court should find that the “inspection, examination, and copying” of governments records under OPRA does not

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decision on procedural grounds). (Pa238-48.) In Sudhakar, similar to Appellants, the plaintiffs sought to conduct forensic tests on the Lindbergh Archive too. (Pa222; Pa228-229.) Specifically, the plaintiffs challenged NJSP’s decision to deny them access to DNA test envelopes, stamps, and wooded items under OPRA and the common law right of access. Ibid. Ultimately, the trial court held that “the physical examination, analysis, extraction, and partial deconstruction” encompassing DNA tests did not constitute a records request because its plain language only permitted inspection, examination, and copying. (Pa234-35.) In other words, OPRA did not “contemplat[e] testing or manipulation[.]” Ibid. (citing N.J.S.A. 47:1A-5(a)). Here, as with the Sudhakar requests, the trial court properly determined that Appellants failed to submit a proper OPRA request. Consistent with Rule 1:36-3, a copy of the unpublished trial court opinion and Appellate Division opinion are attached to Daniel W. Knox’s Certification as “Exhibit A” and “Exhibit B.” (Ra3-31.) Respondents are not aware of any contrary opinions. (Ra02.)

include the right to conduct testing on records and affirm the trial court's dismissal of Appellants' complaint.

## POINT II

**THE TRIAL COURT PROPERLY FOUND THAT APPELLANTS HAVE NO LEGAL RIGHT UNDER THE COMMON LAW TO DEMAND AND FORENSICALLY TEST THE STATE'S HISTORICAL ITEMS. (RESPONDING TO APPELLANTS' POINTS III, V, VI, VIII.)**

This court should affirm the trial court's dismissal of Appellants' complaint because the common law right of access does not authorize DNA testing of government records. Even if the common law could be read to permit such extraordinary relief, the trial court correctly found that the State's compelling interest in preserving historical items outweighs the personal interests of Appellants. Therefore, the Court should affirm the dismissal of Appellants' demands for the records under the common law right of access.

As with OPRA decisions, a trial court's determinations regarding the common law right to access are reviewed de novo. N. Jersey Media Grp., Inc., 447 N.J. Super. at 194. The common law right to inspect public records has long been recognized in this State. See Ferry v. Williams, 41 N.J.L. 332 (1897) (recognizing a common law right to public information). It developed from circumstances where "a party has sought evidence for the prosecution or

[defense] of his rights in pending litigation.” Id. at 334. Now, “[u]nder the common law rule of access to public documents, a citizen is entitled to inspect documents of a public nature . . . provided he shows the requisite interest therein.” Nero v. Hyland, 76 N.J. 213, 222 (1978) (quoting Ferry, 41 N.J.L. at 334). The common law right of access exists independently of OPRA. Mason, 196 N.J. at 67; see also N.J.S.A. 47:1A-8. Although the common law definition of a “public record” is broader than OPRA’s definition of a “government record,” access is not automatic. Bergen Cnty. Imp. Auth. v. N. Jersey Media Grp., Inc., 370 N.J. Super. 504, 509-10 (App. Div. 2004). Rather, “the showing a requestor must make to gain access is greater than that required under OPRA.” N. Jersey Media Grp., Inc., 447 N.J. Super. at 210 (citations omitted).

To gain access to public records under the common law right of access, a requestor must show: (1) the records are common-law public documents; (2) the person seeking has an interest in the subject matter of the material; and (3) the citizen’s right to access outweighs the State’s interest in preventing disclosure. Keddie v. Rutgers, 148 N.J. 36, 50 (1997) (internal quotation marks and citations omitted). When balancing the right to access against the State’s interest in preventing the disclosure, courts consider:

- (1) the extent to which disclosure will impede agency functions by discouraging citizens from providing information to the government;
- (2) the effect disclosure may have upon persons who have given such

information, and whether they did so in reliance that their identities would not be disclosed; (3) the extent to which agency self-evaluation, program improvement, or other decision making will be chilled by disclosure; (4) the degree to which the information sought includes factual data as opposed to evaluative reports of policymakers; (5) whether any findings of public misconduct have been insufficiently corrected by remedial measures instituted by the investigative agency; and (6) whether any agency disciplinary or investigatory proceedings have arisen that may circumscribe the individual's asserted need for materials.

[Loigman v. Kimmelman, 102 N.J. 98, 113 (1986).]

In addition to these factors, courts should “presume that the release of the government record is not in the public interest” when “the requested material appears on its face to encompass legislatively recognized confidentiality concerns.” Michelson v. Wyatt, 379 N.J. Super. 611, 621 (App. Div. 2005).

Here, no one disputes that the items in the Lindberg Archives are subject to public access. The essence of Appellants' argument is that “public access” comes with the right to physically alter or test the accessed record. There is no legal precedent for that proposition.

Here, the trial court correctly found that Appellants' requests to conduct “extra-statutory testing, manipulation, and alteration of archival records” falls outside the scope of the common law right of access. (Pa263.) Appellants' asserted interests in subjecting historical items to forensic testing in their alleged

pursuit of the “truth” is vague at best. (Pb1; Pb25.) More importantly, the trial court found that NJSP’s “interest in preserving the integrity of the [Lindbergh Archive] . . . far exceeds any asserted interest by [Appellants].” (Pa262-263.)

On balance, NJSP’s interest in preserving historical items significantly outweighs Appellants’ asserted curiosity for the “truth.” NJSP has a compelling interest in protecting historical items from the risk of damage, mutilation, or alteration. See Freedom From Religion Found. v. Morris Cnty. Bd. of Chosen Freeholders, 232 N.J. 543, 585 (2018) (Solomon, J., conc.) (recognizing that the preservation of historic structures is an important government purpose.) (citing N.J. Const. art. VIII, § II, ¶ 7). That important interest is expressly reflected in E.O. 110, which requires NJSP to ensure that “there is no risk of damage or mutilation of such files, records and exhibits” so that the items may be preserved for the general public’s benefit. E.O. 110 at Section 2. Consistent with this mandate, NJSP has a substantial and legitimate basis to deny Appellants’ request for DNA testing to prevent any risk of damage or mutilation and to ensure continued public access to the Lindbergh Archive. Ibid. Appellants’ arguments that this preservation obligation is an “overreach” is unsupported and contrary to legal authority. (Pb15; Pb23-24.)

Moreover, the manipulation or alteration of public records undermines, rather than advances, the common law’s goal of transparency. Permitting

forensic testing risks depriving the public at-large, as well as future generations, of the ability to view these historical documents in their original, unaltered state. See Jess Romeo, Testing the DNA in Museum Artifacts Can Unlock New Natural History, but Is it Worth the Potential Damage?, SMITHSONIAN MAGAZINE, (March 13, 2019) [] [smithsonianmag.com/sciencenature/testing-dna-museum-artifacts-unlock-natural-historyworth-potential-damage-180971697/](https://smithsonianmag.com/sciencenature/testing-dna-museum-artifacts-unlock-natural-historyworth-potential-damage-180971697/) (discussing need to balance the desire to test historical items with the newest advancement in technology against the damage that may be caused during testing).

Appellants attempt to avoid this consequence by arguing that “there are multiple approaches to examine and inspect the biological records” that could avoid damaging the Lindbergh Archive. (Pb20.) That argument misses the point. As the trial court found, manipulating and altering the envelopes and stamps would “permanently alter the conditions of the items”, “conflict with NJSP’s directive to protect historical items from damage or mutilation” and deprive “the public access to these items in their original state.” (Pa262-263.)

In short, NJSP has a compelling and significant interest in preserving the integrity of the historical items in its possession. Appellants’ attempts to circumvent that interest, as well as the executive and constitutional protections attached to these items, fall flat. Their generalized pursuit of “truth” does not

tip the scales in favor of DNA testing, particularly where, as the trial court found, “[d]epriving the public access to these items in their original state would not serve the public interest.” (Pa263.) The trial court’s decision to dismiss Appellants’ complaint should therefore be affirmed.

### POINT III

#### **THE TRIAL COURT CORRECTLY DETERMINED THAT APPELLANTS ARE NOT ENTITLED TO ATTORNEY’S FEES. (RESPONDING TO APPELLANTS’ POINT IX.)**

Under OPRA, a prevailing party may be entitled to a reasonable attorney’s fee. N.J.S.A. 47:1A-6. To qualify as a prevailing party “absent a judgement or enforceable consent decree,” a litigant must demonstrate “(1) ‘a factual casual nexus between plaintiff’s litigation and the relief ultimately achieved’; and (2) ‘that the relief ultimately secured by plaintiffs had a basis in law.’” Mason, 196 N.J. at 76 (quoting Singer v. State, 95 N.J. 487, 495 (1984)). Here, Appellants did not prevail under OPRA and, therefore, they are not entitled to an award of attorney fees.

Under the common law right of access, no party has a right to fees, even if that party has prevailed. Gannett Satellite Info. Network, LLC, v. Twp. of Neptune, 254 N.J. 242, 264-65 (2023). Appellants offer no argument to the

contrary. This Court should affirm the denial of Appellants' demand for attorney's fees.

**CONCLUSION**

For all these reasons, the trial court's decision dismissing Appellants' complaint with prejudice and denying their Order to Show Cause should be affirmed.

Respectfully submitted,

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