

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

JONATHAN HAGEL,
MICHELE DOWNIE,
CATHERINE READ,

Plaintiffs-Appellants,

v.

NEW JERSEY STATE
POLICE,

Defendant-Respondent.

:
: 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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**APPELLANT'S RESPONSE BRIEF TO APPELLATE'S BRIEF IN
OPPOSITION TO APPEAL DATED APRIL 20, 2026**

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TABLE OF CONTENTS

	<u>Page No.</u>
PRELIMINARY STATEMENT	1
ARGUMENTS	4
I. THE RESPONDENT MISCONTRUES OPRA BY NOTING THAT “EXAMINATION” DOES NOT INCLUDE MODERN, NON- DESTRCUTIVE FORENSIC METHODS WHEN APPLIED TO EXECUTIVE ORDER 110.....	4
II. THE RESPONDENT MISREAD EO 110, WHOSE PURPOSE WAS TO EXPAND ACCESS AND NOT RESTRICT ACCESS	8
III. THE RESPONDENT AND SUPERIOR COURT MISAPPLIED THE COMMON LAW BALANCING TEST.....	10
IV. THE RESPONDENT DID NOT ADDRESS APPELLANT’S POINT FOUR RAISED IN THEIR BRIEF DISTINGUISHING THEIR EXPERTS AND OPPORTUNITIES TO EXAMINE DOCUMENTS.....	11
V. THE RESPONDENT AND SUPERIOR COURT ARE INCORRECT IN REFERENCE TO LEGAL FEES.....	11
CONCLUSION.....	12

TABLE OF AUTHORITIES

Cases	Page(s)
<u>Loigman v. Kimmelman,</u> 102 N.J. 98 (1986).....	10

Statutes

N.J.S.A. 47:1A-1 to -13 passim

Other Authorities

Executive Order No. 110 (Byrne 1981).....passim

Publications

Star Ledger, January 8, 1995, “Lindbergh trial to be replayed against debates on theories,” by Carrie Stettler, pa 29.....2

New Jersey Network, 1989 documentary titled, “Reliving the Lindbergh Case,”2

PRELIMINARY STATEMENT

The Respondent has neglected to address numerous significant points raised by the Appellants in their Appellate Brief dated April 20, 2026. At its core, this is a basic case with a few basic questions for the Court to answer. The first question is, does OPRA apply to Governor Byrne's Executive Order 110 in which the exact language of OPRA from the Right to Know law was used? If the answer to that question is yes, the next question the Court needs to answer is what was and what is the purpose of EO 110? If the answer to that question is Government transparency and to allow the public to answer open questions in the Lindbergh kidnapping case, then the Court needs to answer if the words "inspect" and "examine" are frozen in time to 1981, or if they can be applied to 2026. The Court can rationally conclude that there is no other purpose for an Executive Order to be issued about a criminal case unless the issuing Governor thought the Court left open questions. Appellants believe that the purpose, nature and intent of EO 110 is clear. Governor Byrne believed that Bruno Richard Hauptmann was involved in the Lindbergh kidnapping, but did not act alone.¹

¹ Appellants submitted examples of this to the Superior Court including on Pa121, the 1989 NJN documentary, "Reliving the Lindbergh Case," and refer this Court to page 29 of the Sunday Star Ledger on January 8, 1995, to the article entitled, "Lindbergh trial to be replayed against debate on theories," by Carrie Stettler, in which Governor Byrne noted in reference to Hauptmann, "'If all you're looking at is where he was that night, did he steal the baby, that's not the mystery,' Byrne observed, 'The real mystery is who told him to go there that night and why he did.'"

Once the Appellate Court answers those questions in the affirmative, the next logical question to answer is, does information exist in the archives on the requested envelopes, that can be examined in compliance with the nature, purpose and intentions of Governor Byrne by issuing EO 110. The answer to that question this Court should consider that the requested information in the archives has existed since the time someone sealed those envelopes and placed stamps on many of them. The genome of the sender of those envelopes is likely and has likely been affixed to those stamps and envelopes since March and April of 1932. It is time to grant access to the Appellants who have their experts on standby ready to fully cooperate with the Respondent by taking samples in full view of the Respondents and in compliance with EO 110.

The Appellate Court can thus turn its focus to the real crux of the Respondent's concern, which is that a favorable ruling to the Appellants will expand the scope of OPRA to include forensic analysis of OPRA requests. Expanding OPRA beyond this case has never been desired by the Appellant's. Their OPRA request is limited in scope and rests solely on the basis that there is a lawful Executive Order entitling them and members of the public to examine the information available to them as members of the public. Because of this, the Appellate Court can be assured that their decision will not broaden the scope of OPRA.

Regarding Appellant's points on urgency, the Respondent completely ignored those arguments. Not surprisingly, the Respondent did not address the proof submitted by Appellants of gross negligence by the Respondent when someone placed a garbage can over hundreds of historical Lindbergh documents to collect water from a leak in the ceiling. They further ignored and did not address the Appellant's experts, when referencing that in time, a forensic analysis may not be possible.

Respondent also did not address the three Appellant experts and their different views on how the documents can be examined without causing damage or mutilation. Rather, they categorically assume that testing will involve mutilation or damage while expecting the Court to believe the OPRA requests for examination of these documents is for documents in their original condition. To this point, the Respondents argument collapses under their own weight where they would like the Appellate Court to both fully understand and appreciate that OPRA exists to promote Government transparency and accountability, yet they assume that the Appellant's experts will cause damage or permanent mutilation using established forensic techniques thus restricting or thwarting transparency.

Other than a cursory overview, the Respondent barely addresses the overwhelming public support for government transparency in this matter and claims that preserving these documents in their original condition outweighs the

Appellants argument. In doing so, they completely ignore the Appellants' point that these documents are not in their original condition.

The Respondents do not even attempt to counter the arguments as to why EO 110 was written. Rather, they ignore the why and focus on OPRA wholistically, antiquated case law, and the presumption that because no case law exists which authorizes OPRA to be applied to an Executive Order for a forensic analysis, there should never be case law in the affirmative on such a request, thus bypassing altogether the purpose behind the issuance of the Executive Order.

For these, and additional reasons already presented as well as those argued below, the Appellate Court should reverse the Superior Court's decision.

LEGAL ARGUMENT

POINT ONE:

THE RESPONDENT MISCONTRUES OPRA BY NOTING THAT "EXAMINATION" DOES NOT INCLUDE MODERN, NON-DESTRUCTIVE FORENSIC METHODS WHEN APPLIED TO EXECUTIVE ORDER 110

The Respondent's brief rests on the single premise that the words of EO 110, which allow the Lindbergh kidnapping evidence to be "available to the public, and subject to inspection and examination..." are frozen in time to either 1963 when the Right to Know law (later OPRA) was enacted, or 1981 when EO 110 was signed. This premise is both factually unsupported and legally incorrect despite

the Appellants candidly being unable to cite case law. This argument made by the Respondent is contrary to the purpose of OPRA and the purpose of issuing EO 110.

To argue this point, the Respondent submitted no expert evidence, no factual record, and no legal authority against the Appellants consistent argument that EO 110 is the authority which grants the Appellants this unprecedented right to conduct an examination and analysis of the forensic information in its request. Ignoring this basic argument that OPRA applies to EO 110, the Respondent cites irrelevant and outdated case law to the main argument, while maintaining that non-destructive forensic methods constitute “alteration” or “mutilation” with no factual basis or expert evidence to their argument. The Respondent repeatedly asserts without proof that the Appellants request for testing is inherently destructive. The Appellants submitted evidence including the stamp on envelope number 11 (Pa205) in which there is no possible way a forensic examination could damage that stamp, whose adhesive appears to be partially connected to the envelope. Ignoring that point, the Superior Court adopted and accepted as fact these unsupported assertions of “mutilation”, “damage” or “alteration” after denying the Appellant’s experts an opportunity to testify on collection methods. These unsupported assumptions constitute a reversible error and are grounds to overturn the lower Court’s decision. If this Court ponders the very question holistically,

the Respondent's argument also fails, given that anyone handling any of those documents has the potential to damage or alter them.

Governor Byrne issued EO 110 precisely because of the overwhelming historical and public interest in the case thereby making the documents available for enhanced public scrutiny and not limited to primitive forms of "examination." Non-destructive forensic examination of historically significant materials under supervision and with minimal risk of damage falls squarely within the purpose of Governor Byrne's EO 110.

The Respondent's definition of "examination" is artificially narrow and legally incorrect. They rely on a dictionary definition arguing that "examination" excludes any forensic analysis. New Jersey Courts have repeatedly held that access statutes must be interpreted considering evolving technology. Naturally, the Respondent does not cite a case defending their argument, because there is no case law holding that "examination" excludes scientific, optical, digital or forensic methods. To this point, they would like the word "examination" to be frozen in time to the enactment of the Right to Know law in 1963 (superseded by OPRA), or 1981 when the EO was issued. If this occurred, OPRA would prohibit: 1. Digital scanning, 2. Spectral imaging, 3. Microscopic inspection, and 4. Digital enhancement.

The Respondent's "destruction" argument is unsupported by evidence. Throughout its brief, the Respondent repeatedly uses the Superior Court's unsupported assertion that the testing of these documents would alter, or damage said documents. However, they do not contradict or submit any evidence to contradict the Appellants three experts. Furthermore, they did not offer their own expert to indicate that the Appellants will damage or alter the documents. They are making assumptions and relying on irrelevant or outdated case law.

The Superior Court denied Appellants the opportunity to call their witnesses to testify on testing procedures on this issue, yet made factual findings that the Appellants will alter, damage or destroy the requested documents. This contradicts the basic tenants of OPRA proceedings, in that, if there are factual disputes, the Court cannot resolve those without evidence and the Respondent's brief attempted to convert that speculation into fact.

The failure of the Respondent to adequately counter a main argument of the Appellants is obvious. OPRA will not be expanded by applying EO 110 for the specific purpose, and intent of complete government transparency in the Lindbergh case. A favorable ruling will not allow other OPRA cases to be subjected to forensic, genome and DNA analysis absent an Executive Order about that specific case.

OPRA's purpose supports public access, not restrictions. EO 110 supports public access, not restrictions. The Lindbergh case is one of the most historically significant criminal cases in American history. A forensic analysis could resolve long-standing factual controversies, confirm or refute historical conclusions and enhance public understanding of government action. Reversing the Superior Court's decision will maximize public knowledge about public matters, while upholding the purpose of OPRA and EO 110, and potentially end a nearly century-long debate over whether New Jersey committed an injustice in this matter. Contrarily, upholding the lower court's decision will continue to shield historical truth by refusing to permit modern and safe examination techniques and failing to uphold an Executive Order.

POINT TWO:

THE RESPONDENT MISREAD EO 110, WHOSE PURPOSE WAS TO EXPAND ACCESS AND NOT RESTRICT ACCESS

Governor Byrne enacted EO 110 because the Lindbergh evidence warranted extraordinary public scrutiny. It's wording demonstrates that: 1. There is an extraordinary interest in this case, 2. All materials were made available to the public, 3. Access far beyond the Right to Know law is implied and should be permitted. This EO is law until it is rescinded or moot. It has not been rescinded. It is not moot. Governor Byrne's EO 110 is valid law that grants the public broad

access to the Lindbergh documents and evidence. The Respondent's denied this access to the Appellants and members of the public for approximately fourteen months.

In their response, the Respondent has treated EO 110 as a categorical ban on all scientific methods while also ignoring the Appellants argument that even their basic handling of the documents and lack of treating the documents with respect, as demonstrated by the water leak in their building, can cause damage. The reality is that non-destructive forensic techniques pose minimal or no risk of damage. Global museums and archives use non-destructive and non-damaging examinations regularly. The Respondent even goes so far as to allow researchers opportunities to propose testing, which allows Appellants to test. This contradicts any argument the Respondent has that the Appellants cannot test, while researchers may request permission to test.

As proposed, the Respondent's rebuttal would freeze the public's ability to use technological innovations to the year 1981. If approved, this would prohibit digital imaging, microscopic analysis, chemical free DNA recovery, forensic light sources and other commonly accepted examination techniques. Governor Byrne did not contemplate stagnation due to technological advancements in EO 110, and specially left the language open-ended due to the significant public interest in the Lindbergh kidnapping case and his own belief that Hauptmann did not act alone.

POINT THREE:

**THE RESPONDENT AND SUPERIOR COURT MISAPPLIED THE
COMMON LAW BALANCING TEST**

The State's preservation interest is legitimate but not absolute. The Respondent argued that preservation outweighs all other interests. That is not the law. Under *Loigman*, the Court must balance: 1. The public interest, 2. The requester's purpose, 3. The nature of the records, 4. The Government's interest in confidentiality or preservation. [*Loigman v. Kimmelman*, 102 N.J. 98, 113 (1986).] The Respondent is treating preservation as dispositive and ignores all other factors.

The public interest in this case is overwhelming. Respondent dismisses Appellants' interest as "curiosity." This is a mischaracterization for very serious Appellants who were harmed and unable to access the archives for fourteen months. To the broader public, the Lindbergh case was a defining moment in American criminal law, the subject of mass national historical debates, which impacted culture and the law, and has remained a matter for enduring scholarly interest. The public interest in this case is substantial, well-documented and well-recognized.

The State's preservation concerns are speculative and unsupported by evidence and should not outweigh the mass support presented to the Court by the

Appellants. The Respondent offered no evidence that non-destructive testing poses any risk. Furthermore, they offered no evidence to suggest that Appellants proposed collection methods are inconsistent with archival standards and law enforcement standards. Lastly, the Respondent offers as proof that the materials cannot be examined safely. To this point, speculation alone, without expert testimony or evidence, cannot outweigh overwhelming public interest on an assumption that preservation is in jeopardy.

POINT FOUR:

THE RESPONDENT DID NOT ADDRESS APPELLANT'S POINT FOUR (Pa16-22) RAISED IN THEIR BRIEF DISTINGUISHING THEIR EXPERTS AND OPPORTUNITIES TO EXAMINE DOCUMENTS

The Appellate Court should note that all arguments about differences between expert opinion, opinions and testing procedures were not contemplated either by the Superior Court or the Respondent in their brief. Rather, both the Court and the Respondent categorically note that testing will be destructive or damaging, and there apparently are no differences between the opinions of the three expert witnesses the Appellants brought forward.

POINT FIVE:

THE RESPONDENT AND SUPERIOR COURT ARE INCORRECT IN REFERENCE TO LEGAL FEES

The Respondent acted in bad faith, unreasonably and/or knowingly and willfully violated OPRA by denying access to the Appellants, and for closing public access to the archives for fourteen months, thereby harming the public, the Appellants, their friends, authors and journalists. Accordingly, legal fees should be awarded.

CONCLUSION

Plaintiffs and their friends have been seeking the truth in this case for years. There is an opportunity to answer some basic questions in this historical matter while complying with the purposes of the Right to Know law, OPRA and Governor Byrne's Executive Order 110. In their Response Brief, many significant arguments made by the Appellants were glossed over or completely ignored. The Respondent did not address or make any counter argument as to why EO 110 was written and what its complete purpose is. They did not address the sense of urgency. They did not connect that EO 110's words mirror the Right to Know law (later OPRA) with the obvious conclusion that OPRA is applicable to the EO. They did not distinguish between experts and completely ignored the Appellant's fourth point in its brief altogether (Pa16-22). Respondent wants the Court to conclude that destruction or damage are inevitable and that a favorable ruling will expand OPRA to other cases. The Respondent wants this Court to believe that the Respondent acted reasonably by closing the archives in violation of EO 110 for

fourteen months. The Court does not need to hold today that all requested testing must be allowed. Rather, it can hold that the Superior Court should not have resolved the technical risk and preservation questions without allowing a proper evidentiary record on the specific proposed testing protocols. The Court can also rule that some evidence presented, such as the stamp on envelope 11 can be tested without allowing every other request to be approved (though Appellants recognize that testing of the blank ransom envelope number 1 (Pa102, is the most valuable to posterity).

The evidence presented before the Appellate Court is overwhelming. The evidence presented demonstrates the purpose, nature and intent of Governor Byrne's EO 110, the applicability of OPRA, and how the Plaintiffs have been harmed by the Defendant. This case should be reversed. If the Appellate Court deems that reversal is not appropriate, the case should be remanded to the Superior Court for multiple errors.

Respectfully submitted,
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