August 18, 2021

Charles Marshall  
University Counsel  
University of North Carolina  
123 West Franklin Street  
Campus Box 9105  
Chapel Hill, North Carolina 27516-9105

**URGENT**

*Sent via Electronic Mail (charles.marshall@unc.edu)*

Dear Vice Chancellor Marshall:

FIRE\(^1\) appreciates the long-standing collaborative relationship between FIRE and UNC and that the university substantively responded to our letter of August 4, 2021. However, that response does not resolve our concerns with the university’s inquiry into the disclosure of the Hussman donor agreement.

We agree that, to the extent an inquiry is appropriate here, such an inquiry would necessarily seek information from those who hold potentially relevant information. Accordingly, we have no objection to inquiries raised with those who had access to the document before its disclosure.

However, the inquiries here involve faculty members who we understand did not have access to this document before its disclosure, and we are aware of no evidence that the outspoken professors targeted by the inquiry otherwise had potentially relevant information.

Thus, it continues to appear that the subjects of the inquiry were selected based on protected expressive activity—the assumption that if they spoke to the media, they may have knowledge of the unauthorized disclosure. We welcome any information you might share to alleviate these concerns, and, to that end, have enclosed a public records request with this correspondence.

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\(^1\) As you may recall, the Foundation for Individual Rights in Education (FIRE) is a nonpartisan, nonprofit organization dedicated to defending liberty, freedom of speech, due process, academic freedom, legal equality, and freedom of conscience on America’s college campuses.
Further, we have received reports that UNC has not only subjected these faculty members to administrative meetings with unclear authority, scope, and consequences, but that the university has also surveilled faculty email accounts in contravention of university policy.

UNC’s Privacy of Electronic Information Policy (“Email Privacy Policy”) ensures that “[t]he University encourages the use of electronic mail and respects the privacy of users. It does not inspect or monitor electronic mail routinely.” The “Users” mentioned under the Email Privacy Policy include faculty. An exception to the policy’s respect for the privacy of email users is made for “investigating reports of violation of University policy or local, state, or federal law.” However, the policy requires that intrusions into faculty and other users’ emails for the purposes of such investigations be approved by the Provost, Vice Chancellor, and General Counsel. These intrusions must also “be limited to what is reasonably necessary to acquire the information” for the investigation.

Assuming that the disclosure of the Hussman donor agreement did, in fact, breach university policy, an investigation into this alleged policy breach should be reasonably limited to those who had actual access to the disclosed document before its disclosure to the Raleigh News & Observer. Here, UNC has instead reportedly targeted faculty members, including journalism professors Deb Aikat and Daniel Kreiss, who did not have regular, pre-disclosure access to the Hussman agreement, as explained in our letter of August 4.

The breadth of UNC’s search of faculty email accounts has not only violated its own policy, but it has also imperiled academic freedom and individual privacy.

First, UNC’s probe into the email accounts of those who had no pre-disclosure access to the Hussman agreement is not “reasonably necessary to acquire the information” needed to investigate that disclosure. To the extent an email probe was necessary at all, an investigation targeted at that which is “reasonably necessary” instead would focus on, for example, the administrators, development personnel, or administrative staff who had actual access to the document in question in UNC’s Database for Advancing our Vision of Institutional Excellence (DAVIE) before the document was disclosed to the News & Observer.

Second, UNC’s probe will cause a chilling effect on faculty speech and academic freedom. In addition to the chill already caused by UNC’s inquiry and its requests to meet with certain outspoken faculty members, as discussed in our previous letter, faculty will now experience further chill, knowing that their emails are potentially being monitored by university administrators. This chill will not only affect conversations critical to the university, but will also affect conversations related to research and pedagogy.

Research and pedagogy—issues at the core of the traditional right to academic freedom—often cover controversial topics, and faculty members may fear retaliation if university

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2 Unv. of North Carolina, Privacy of Electronic Information (Feb. 27, 2002), https://policies.unc.edu/TDClient/2833/Portal/KB/ArticleDet?ID=132145.
3 Id.
4 Id.
5 Id.
6 Id.
7 It is our understanding that this is an open question, and that such records may properly be considered public records under NCGS § 132-1-10.
administrators have access to personal notes and conversations related to academic pursuits.\(^8\)

It continues to appear that UNC has targeted outspoken faculty, including Kreiss and Aikat, not because it credibly believes these professors were involved in disclosure of the Hussman agreement, but because they publicly criticized the university. As explained in our previous correspondence, nothing indicates Kreiss’ or Aikat’s criticism was based on access to confidential information not already obtained by the media.

As we explained in our last letter, an investigation into individuals for exercising their constitutionally protected right to free expression itself violates the First Amendment, even if the investigation concludes without discipline for the speakers. Concerns about retaliation only amplify when chilling effects and violations of privacy policies enter the picture.

If it is UNC’s position that it did not target outspoken faculty, we ask that the university specify the steps it took in its inquiry before shifting to faculty. For example, did UNC:

- Check the DAVIE logs to determine if there was unusual access to the agreement?
- Interview the hundreds of administrators and development staff members who had access to the Hussman agreement through DAVIE?
- Check with those individuals who administer DAVIE?

We again urge UNC to ensure it is not unlawfully targeting faculty members as potential suspects or witnesses in its inquiry merely because they have been critical of the university. We invite UNC to present information that will alleviate the chilling effect already cast upon faculty by this inquiry.

Given the urgent nature of this matter, we request receipt of a response to this letter no later than the close of business on Friday, August 25, 2021, confirming that any inquiry will abide by institutional policy and the Constitution.

Sincerely,

Lindsie Rank
Program Officer, Individual Rights Defense Program
Hussman School of Journalism & Media, MA Class of 2018
UNC School of Law, Class of 2018

Cc: Kevin Guskiewicz, Chancellor
    Katie Nolan, Chief of Staff & Exec. Dir. of Strategy, Policy, & Special Projects
    Catherine Pierce, Dir. of Development, Planning, & Strategic Projects
    David Routh, Vice Chancellor for University Development
    Robert A. Blouin, Executive Vice Chancellor and Provost

Encl.

\(^8\) It is also concerning that, while UNC allows incidental personal use of its email systems, at least one email reviewed by university administrators was between Aikat and his wife.
All emails and other communications sent or received by university officials pertaining to the University of North Carolina at Chapel Hill’s inquiry into the disclosure of a confidential donor gift agreement with Walter Hussman Jr.

All notes, memoranda, reports, and other documents generated or held by university officials in connection with the inquiry into the disclosure of a confidential donor gift agreement with Walter Hussman Jr., excluding any documents (including emails) collected from accounts belonging to faculty members or students.

This request is limited to records generated between July 1, 2021, and the present date.

**Please note that this request does not seek a search of faculty or student email accounts or records.** These requests should in no way be construed to include a review or search of email accounts, websites, or other forms of data or document retention which are controlled by students, alumni, or faculty members, nor by governmental or advisory bodies controlled by the same, except insofar as any such individuals also serve in an administrative capacity and the records were created or are held by the individual in that capacity. Any search should be limited to documents held by the administration and/or its staff members, including records created or maintained by persons acting in the capacity of administrators or staff members.