

FIRE

Foundation for Individual
Rights and Expression

March 6, 2023

Cary Snyder
Taft Stettinius & Hollister LLP
200 Public Square, Suite 3500
Cleveland, Ohio 44114-2302

Sent via U.S. Mail and Electronic Mail (CSnyder@taftlaw.com)

Dear Mr. Snyder:

The Foundation for Individual Rights and Expression (FIRE), a nonpartisan nonprofit dedicated to defending freedom of speech,¹ is concerned by Ohio Northern University requiring Professor Scott Gerber to submit to university questioning without first informing him of the specific allegations against him. FIRE calls on ONU to provide Gerber with the full details of the misconduct allegations.

On January 13, Director of Human Resources Emily Rosebeck requested a meeting with Gerber for an “HR issue.”² When pressed for details, Rosebeck said ONU “retained Taft Law to conduct an independent investigation regarding complaints and concerns that have been brought to its attention. You have been identified as a person that may have information regarding the allegations.”³ Gerber requested details of the allegations before meeting with administrators, but Rosebeck refused to disclose any additional information.⁴

On January 20, you informed Gerber’s attorney J. Michael Murray that ONU “will not be providing copies of the complaints and concerns that Ohio Northern has received as a prerequisite to interviewing Professor Gerber.”⁵ You stated that “Gerber is the subject of the complaints and concerns that Ohio Northern has received,” adding that “Taft does not have any authority to compel Professor Gerber to submit to an interview and so his participation is

¹ For more than 20 years, FIRE has defended freedom of expression, conscience, and religion, and other individual rights on America’s college campuses. You can learn more about our recently expanded mission and activities at thefire.org.

² Email thread between Rosebeck and Gerber (Jan. 13-18, 2023) (on file with author). This recitation reflects our understanding of the pertinent facts. We appreciate that you may have additional information to offer and invite you to share it with us. To these ends, please find enclosed an executed privacy waiver authorizing you to share information about this matter.

³ *Id.*

⁴ *Id.*

⁵ Email thread between Snyder and Murray (Jan. 18 to Feb. 28, 2023) (on file with author).

completely voluntary.”⁶ Murray reiterated Gerber’s request for more information about the complaints.

On February 10, you informed Murray that ONU will be “concluding our investigation and compiling our findings, which will be presented to the University.”⁷ You also said “Gerber’s refusal to participate violates Section 5.1: Standard of Conduct of the Ohio Northern University Staff Handbook, which lists ‘[r]efusing to cooperate with a University investigation’ and ‘insubordination’ among the behaviors that could result in disciplinary action against him.”⁸

ONU violates its obligation to deal with faculty with fairness and integrity by contradicting itself on whether Gerber must submit to an interview and failing to disclose the nature of complaints against him. ONU is accredited by the Higher Learning Commission, which requires any accredited institution—including ONU—to “ensure fair and ethical behavior on the part of its . . . administration” and to “operate[] with integrity in its financial, academic, human resources and auxiliary functions.”⁹ Assuring Gerber “his [interview] participation is completely voluntary” then threatening punishment for “[r]efusing to cooperate with a University investigation,” is a far cry from the institutional integrity the Commission requires. Additionally, ONU’s threatened discipline for refusing to speak to your law firm about complaints against him—without first disclosing the nature of the complaints—is a manifestly unfair disciplinary procedure designed to prevent Gerber from understanding and defending himself against the misconduct allegations.

FIRE requests a substantive response to this letter no later than the close of business on March 20, 2023.

Sincerely,



Zachary Greenberg
Senior Program Officer, Campus Rights Advocacy

Cc: Janica Pierce Tucker, Partner, Taft Stettinius & Hollister LLP

Encl.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ HIGHER LEARNING COMMISSION, CRITERIA FOR ACCREDITATION, (Sept. 1, 2020), <https://www.hlcommission.org/Policies/criteria-and-core-components.html>.

Authorization and Waiver for Release of Personal Information

I, Scott Gerber, do hereby authorize Ohio Northern University (the "Institution") to release to the Foundation for Individual Rights and Expression ("FIRE") any and all information concerning my employment, status, or relationship with the Institution. This authorization and waiver extends to the release of any personnel files, investigative records, disciplinary history, or other records that would otherwise be protected by privacy rights of any source, including those arising from contract, statute, or regulation. I also authorize the Institution to engage FIRE and its staff members in a full discussion of all information pertaining to my employment and performance, and, in so doing, to disclose to FIRE all relevant information and documentation.

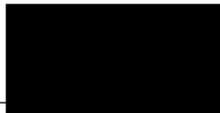
This authorization and waiver does not extend to or authorize the release of any information or records to any entity or person other than the Foundation for Individual Rights and Expression, and I understand that I may withdraw this authorization in writing at any time. I further understand that my execution of this waiver and release does not, on its own or in connection with any other communications or activity, serve to establish an attorney-client relationship with FIRE.

If the Institution is located in the State of California, I request access to and a copy of all documents defined as my "personnel records" under Cal. Ed. Code § 87031 or Cal. Lab. Code § 1198.5, including without limitation: (1) a complete copy of any files kept in my name in any and all Institution or District offices; (2) any emails, notes, memoranda, video, audio, or other material maintained by any school employee in which I am personally identifiable; and (3) any and all phone, medical or other records in which I am personally identifiable.

This authorization and waiver does not extend to or authorize the release of any information or records to any entity or person other than the Foundation for Individual Rights and Expression, and I understand that I may withdraw this authorization in writing at any time. I further understand that my execution of this waiver and release does not, on its own or in connection with any other communications or activity, serve to establish an attorney-client relationship with FIRE.

I also hereby consent that FIRE may disclose information obtained as a result of this authorization and waiver, but only the information that I authorize.

Signature



Date

3/3/2023