

Issuing of Staff and Student References Advisory Note

Provision of references

Individuals should always, where possible, seek permission before giving a member of staff's name as a potential reference provider. This will give both sides the opportunity to discuss the candidate's suitability for the post in question. It will also reduce the risk of staff refusing to supply a reference. Where such a request is refused, it should be done in neutral language, so that it cannot be interpreted as a negative act.

Data Protection

Provided a reference is given in confidence it is exempt from disclosure in response to a subject access request received under the General Data Protection Regulation (GDPR)/Data Protection Act 2018. This applies to both references received and references given. This means that if an organisation receives a subject access request for a confidential reference about the individual making the request, whether created by that organisation or received from a third party, it is likely to be exempt from disclosure.

Providing a Reference

If you are asked to provide a reference you should take the following points into consideration:

- There is no legal obligation to provide a reference. If you are asked to provide a reference and do not wish to do so you should politely decline without implying a negative reference.
- If you provide a reference and you would like it to remain confidential you should clearly state this on the reference, for example "Strictly confidential - employment reference"
- The content of the reference must be true and accurate. The reference should be kept factual using a neutral, professional language and tone. If a false or inaccurate reference is provided the subject could pursue either/or both the individual reference provider and the University for damages, if they can demonstrate that they have sustained losses due to the negligence of the reference provider through carelessness or inaccuracy.
- Where expressions of opinion are sought, these should only be provided if it is within the professional capacity of you to do so.
- Where a reference form requests sensitive (or special category data), e.g. sickness, mental health problems, criminal records, philosophical or religious beliefs or sexuality, this should not be provided unless specifically requested to do so (in writing) by the subject. If no such request has been made, "I am not in a position to comment regarding X's health/sickness record" would be a suitable response.

When writing a reference you should remember that there are circumstances where the content of the reference may be revealed even where the reference is clearly marked as confidential, for instance, in cases of litigation or where information relating to the identity of the referee is removed but some of the content is released.

Requesting a Reference

When requesting references from third parties reference providers should be asked to clearly indicate whether they would like their reference to be regarded as confidential. However, it should be noted that in some circumstances the reference or content of the reference may be disclosed to the subject despite the wishes of the reference provider.

Open references

Finally, staff should be encouraged, where possible, to write open references, which are seen by the subjects before they are sent. This option has the advantage of openness and transparency and reduces any possible risk of litigation, either against the reference provider or the University.

Data Protection Unit

Data.protection@stir.ac.uk

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