

References Policy and Procedure

Scottish Information Commissioner



Scottish Information
Commissioner

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Glossary and abbreviations

Term used	Explanation
The Commissioner	Scottish Information Commissioner
SMT	Senior Management Team
HOCS	Head of Corporate Services
FAM	Finance and Administration Manager

Introduction

1. This Policy sets out the approach of the Scottish Information Commissioner (the Commissioner) to requesting a reference as part of the Recruitment Process and to providing a reference, for recruitment or mortgage purposes, for a current or former member of staff.

Requesting a Reference

2. The Commissioner will normally make two reference requests for the successful candidate: a corporate reference to the current employer (where applicable) and a personal reference. Referees are only approached for a reference when the successful candidate has given express permission.
3. Where a reference request does not result in receipt of a reference, an alternative referee, named by the candidate, will be approached. Only where a corporate reference is not available, for example where a candidate has little or no work history, will an additional personal reference be requested.
4. Where reference information is required quickly, the SMT member of the Recruitment Panel may make a telephone request subject to express permission from the successful candidate. After confirmation that the appropriate person is taking the call, the information requested should be the same as set out the Commissioner's Reference Request Letter. An accurate note of the information provided by a referee will be placed in the relevant HR file and signed by the SMT member who took the reference. The standard Commissioner's Reference Request Letter will still be sent (see sample letter below at Annex A).

Providing a Reference

5. It is the Commissioner's Policy to provide references for current staff members and for former employees for a period of two years after their employment has terminated. The Commissioner only provides corporate references and will provide these where a written request is received on company headed paper, by e-mail, post or fax from a potential employer. This also applies to a financial reference request from a mortgage supplier.
6. Requests to provide a reference should be addressed to the Commissioner. All corporate references provided by the Commissioner will be signed by the Head of Corporate Services (HOCS).
7. Individual staff may be asked to provide a reference for a current or former colleague. If they agree to do so, then it must be made clear that they can only provide a personal reference, that they are not providing the reference on behalf of the Commissioner and that they are only providing the reference in their personal capacity. The Commissioner's letterhead notepaper, fax or a work e-mail address must not be used under any circumstance to provide a personal reference.
8. Where the Commissioner is asked to provide a reference for a current staff member, the express consent of the staff member must be obtained before any information is provided.
9. The Commissioner's reference letters will be produced in draft for the HOCS by the Finance and Administration Manager (FAM), who is responsible for checking and providing the factual information requested.

10. A reference request to the Commissioner may ask for the confirmation of statements made in a job application, or ask for opinions as to the candidate's suitability for the post. When responding to such queries, and in general when providing a reference, the Commissioner will provide only the following factual information:
- (i) Employee Name
 - (ii) Job Title
 - (iii) Type of Contract
 - (iv) Dates of Employment
 - (v) Current Salary
11. Information relating to any of the following, known as 'protected characteristics', must not be given when providing a reference:-
- (i) age
 - (ii) disability
 - (iii) race
 - (iv) gender reassignment
 - (v) marriage or civil partnership
 - (vi) pregnancy or maternity
 - (vii) religion or belief
 - (viii) sex
 - (ix) sexual orientation
12. All the Commissioner's references should contain the following disclaimer 'This reference is given in good faith in accordance with the normal practice of the Scottish Information Commissioner and without legal liability on behalf of the Scottish Information Commissioner'.

Confidentiality and Data Protection

13. All reference information is treated as confidential. Further information is detailed in the attached Appendix.

Appendix: Confidentiality and Data Protection

References Requested by the SIC

1. The Data Protection Act 2018 and the UK GDPR gives an employee the right, on request, to access information containing any personal data held by the employer. This is known as a subject access request. Personal data includes references received by the Commissioner from a former employer. However, if the disclosure of information would identify a third party (in this case, the former employer), the Commissioner (the current employer) can refuse the access request unless:
 - (i) the third party has consented to the disclosure; or
 - (ii) it is reasonable to comply with the request without consent.
2. The Commissioner aims to be as open and transparent as possible when dealing with a subject access request from a member of staff. If consent cannot be obtained (for example, the third party cannot be contacted) or it is refused, then the SIC needs to consider whether or not disclosure is reasonable, taking into account:
 - (i) any duty of confidentiality owed to the third party;
 - (ii) the steps taken to seek consent;
 - (iii) whether the third party is capable of giving consent;
 - (iv) any express refusal of consent.

References Provided by the SIC

3. References are exempt from subject access requests in the hands of the originating data controller. This means that members of the Commissioner's staff do not have a legal right of access, through the Commissioner, to any employment reference provided in confidence by the Commissioner to a potential employer.
4. Once the reference has been received by the potential employer, the staff member will have the right to make a subject access request to the employer for that reference.

Annex A: Sample standard reference request letter

Dear

Reference for *applicant's name*

Reference for xxxx

XXXX is being considered for the post of [xxx]. XXXX has indicated that you would be willing to provide an employment reference and has consented to us contacting you. Therefore, I would be grateful if you would provide the following information:

- Details of XXXX's role, length of employment and employment relationship to you as referee
- XXXX's suitability for the post of [xxx] and any other relevant information – a copy of the job description is attached
- XXXX's sickness absence figures for the last 12 months

Please provide the reference by e-mail to kberry@itspublicknowledge.info marked "**Confidential**".

Please feel free to contact Helen/Kim by email or on 01334 xxxxx should you have any queries.

Yours sincerely

**Helen Gardner-Swift/Kim Berry
HOCS/FAM**

Scottish Information Commissioner

Kinburn Castle
Doubledykes Road
St Andrews, Fife
KY16 9DS

t 01334 464610

f 01334 464611

enquiries@itspublicknowledge.info

www.itspublicknowledge.info