

Providing references for students and staff Guidance Document FOR STAFF

As part of your role at the University (for example as a personal tutor or a line manager) you may be asked to provide a reference for a current or former student, or an employment reference for a member of staff, in response to a request from themselves or from an employer or education provider.

The information disclosed in that reference falls under the definition of personal data in the Data Protection Act 1998. This document is intended to provide guidance about your rights and responsibilities under the Act. It should not be taken to constitute general guidance on how to write and what to include in a reference; the Human Resources Department will advise you on this aspect of reference writing and upon receiving a request for an employment reference your first action should be to contact them. If you decide that that you would like to provide a more detailed personal reference for a student and/or staff member you should follow the principles outlined in this guidance document.

Providing a reference

The fact that a student or member of staff has named you as their referee is considered under the Act as giving consent for you to share their personal information with a third party in the form of a reference. However in the interests of keeping that information secure you should ensure that the requester of the reference has been solicited by the student or member of staff concerned. In most cases your permission to be named as a referee should have been sought and therefore you will be aware of whom your contact details have been passed on to. Requests should come in on headed paper, or if emailed should be from a company or organisation email address. If however you are unsure as to the validity of the request it would be advisable to contact either the requester or the person who passed on your details to check. When you then respond to that request you should make sure it is on University headed paper and send it to a named recipient; it is best to avoid addressing such information 'To whom it may concern'.

You must not disclose **any** sensitive personal data in the reference you provide, without receiving permission in the form of explicit, written consent. This means your reference must not contain information relating to the subject's:

- racial or ethnic origin,
- political opinions,
- religious beliefs or other beliefs of a similar nature,
- membership of a trade union,
- physical or mental health or condition,
- sexual life,
- commission or alleged commission of an offence, or
- any proceedings relating to the commission or alleged commission of an offence.

There may be circumstances in which you may feel it would be to the individual's benefit to give some of this information. As an example: you may be asked to give details of the number of days of absence they have had and, as this is non-sensitive data, you can provide it. However you may know that the reason for those absences was as a result of a medical condition and feel that without knowledge of that health information then the employer may receive a misleading and negative impression. In such a case you could contact the individual concerned and explain to them what information it is you wish to disclose, for what reason and to whom, and request their written (or emailed) consent. If they refuse this consent you may have to consider your duty of care and whether you can provide the information requested.

The same applies to any knowledge of any criminal convictions the individual may possess; without consent you may not disclose them. However if the individual has been the subject of disciplinary procedure within the University then you may include this information. Although this is only for cases when the student or member of staff has been found guilty; if the individual was absolved or proceedings are still ongoing then no mention of it can be made (although in cases of ongoing investigations in which you yourself are involved, you may wish to consider your suitability to provide a reference, and may choose to nominate another member of staff to answer the request).

You should be aware that there is no legal obligation to provide a reference. If you feel unable to provide one because you do not feel you know the individual well enough (for example because you have had limited contact with them or several years have elapsed since they were a student at the University) then you may wish to nominate another member of staff or to decline to give a reference. In such circumstances it would be good practice to explain your reasons so that the employer does not infer a negative from the refusal. If the requester is a former employee of the University you should direct them to the Human Resources Department who will provide them with a factual reference detailing their start and end date, job title, salary and so forth.

Access to References

References provided by the University of Lincoln

There is an exemption in the Act which means having given a confidential reference to an employer or education provider, you may refuse to provide a copy of that reference to the individual about whom it was written. However there is no exemption which prevents that individual putting in a data subject access request to the employer or education provider who *received* that reference and obtaining a copy from them. This may be the case even where you have marked your reference 'in confidence' and/or have refused consent for the individual to see it. It is therefore important when writing a reference to be aware that it may be seen by the individual and to take this into account when appraising their suitability for the role applied for. You should make sure that if you have provided your opinion alongside any factual details, that they are clearly differentiated as such.

References received by the University

As mentioned above, the receiving organisation may be required, in response to a data subject access request, to provide the individual with a copy of the reference written about them. It is necessary to consider the person who has provided it, and whether there may be good reason to withhold access, such as a realistic threat of violence to the referee, but in the majority of cases it is recommended good practice to make the information available when asked. It should be borne in mind that one of the eight principles of the Act states that personal information must be accurate, and the individual's ability to verify this depends on them knowing what has been said about them. It is also not sensible under the Act to hold back information already known to the individual. Factual information such as dates of study or employment, or details of qualifications or training will already be known to the individual concerned, and there is an expectation that information relating to performance will have been discussed with them, as part of feedback from lecturers or from the employee appraisal system. You should therefore consider the individual as having a legal right to view their reference.

Internal references

The Information Commissioner has advised that references sent internally should be disclosed upon receipt of a subject access request; this means that if you are providing an employment reference for a member of staff applying for a job within the University of Lincoln, then they have a legal right to see that reference, if they request it under the Act.

Sources of Further Advice and Guidance

University Staff

Data Protection

Information Compliance Officer, email: compliance@lincoln.ac.uk

Human Resources

The Human Resources Department, email: hr@lincoln.ac.uk

External Links

Information Commissioner's Office (ICO)

The ICO provides extensive guidance on all aspects of data protection compliance on its website, at <https://ico.org.uk/>. Advice on data protection and employment, including requesting a copy of employment references, can be found at <https://ico.org.uk/for-the-public/employment/>.