

# References Policy and Procedure

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**Scottish Information Commissioner**

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Scottish Information  
Commissioner

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## Cross-referenced INVU documents (for internal use)

INVU No	INVU name
INV11751	This document

## Introduction

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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

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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 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 Chair of the Commissioner's Recruitment Panel may make a telephone request. After confirmation that the appropriate person is taking the call, the information requested should be the same as the Reference Request Letter. An accurate note of the information provided by a referee will be placed in the relevant HR file. The standard Commissioner's Reference Request Letter will still be sent (see sample letter below at Annex A).

## Providing a Reference

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5. It is the Commissioner's Policy to provide references for current staff members and for former employees for a period of **one** year 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 or fax from a potential employer. This also applies to a financial reference request from a mortgage supplier.
6. Requests for the Commissioner to provide a reference should be addressed to her. All corporate references provided by the Commissioner will be signed by the Head of Operational Management.
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 and that they are not providing the reference on behalf of the Commissioner. SIC 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 Head of Operational Management by the Finance and Administration Manager, 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. 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**

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

## Appendix: Confidentiality and Data Protection

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### References Requested by the SIC

1. The Data Protection Act 1998 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 SIC staff members do not have a legal right of access, through the SIC, to any employment reference provided in confidence by the SIC to a potential employer. However, as the SIC aims to be as open and transparent as possible about the information it holds on staff, SIC staff can request to see a corporate reference provided about them by the SIC.
4. Once the reference has been received by the potential employer, the staff member will then also have the right to make a subject access request to the employer for that reference.

## **Annex A: Sample standard reference request letter**

*For FOIO (E) to be adapted for other roles*

Dear

### **Reference for *applicant's name***

*Applicant Name* has put forward your name as a professional referee in support of his/her application for the post of Freedom of Information Officer in my office. *Applicant Name* was the candidate preferred by the selection panel at interview and I would now like to take up the offer of reference which, if satisfactory, will allow me to offer him/her the position.

### *Career*

1. Please would you confirm:
  - (i) *his/her* role(s) within *organisation name*, and
  - (ii) the period of employment?
  - (iii) Information on grade and salary point on leaving would be appreciated.
2. Would you please comment on his/her overall performance, with reference to any strengths and weaknesses emerging from performance review?
3. Has any disciplinary action been taken in the previous year?
4. Was sickness absence in the last year
  - (i) Less than 10 days?
  - (ii) Greater than 10 but less than 30?
  - (iii) Greater than 30?

### *Suitability for current vacancy*

Applicant Name has applied for the post of Freedom of Investigations Officer (Enforcement), (job description attached)

This is the core professional post within my office. Staff must be educated to degree level, have at least 3 years' relevant work experience and exhibit knowledge of freedom of information and related legislation (e.g. Data Protection Act, Environmental Information Regulations). Investigations Officers are responsible for investigating appeals arising out of the refusal of Scottish public authorities to provide information to applicants.

In addition, staff respond to enquiries and provide advice to public authorities and the public in respect of their rights and obligations under the Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004. The work requires a meticulous approach, an ability to interpret legislation, an ability to build relationships of trust with authorities and the public and absolute integrity so far as receiving and maintaining as confidential information acquired in the course of investigations.

Would you please comment upon Applicant Name's suitability for such a role?

Finally if you feel there is any further information which may be useful then I would be pleased to receive it.

Thank you once again for agreeing to provide this reference. The information you provide will not only assist us in making a good appointment but will also guide us in shaping the induction and performance management programme after the post has been taken up.

Yours sincerely

**Rosemary Agnew**  
**Scottish Information Commissioner**



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