

## **Data Protection Guidance: References & Interview Notes**

Under the Data Protection Act 1998, where a confidential reference is given by the University for Education Purposes, training or employment purposes, appointment to office or provision of any service, the subject of the reference is not entitled to a copy of the reference from the University. The subject of a reference may however, be entitled to a copy of the reference from the recipient organisation. Likewise, where the University gives and receives a reference (i.e. the reference is for internal purposes and may be sent from one department to another), the subject of the reference is not entitled to a copy of the reference from the giver, but may be entitled to a copy from the receiver.

If Exeter is the recipient of a reference and the student or member of staff concerned has requested a copy of the reference, then the University must take steps to contact the author (preferably in writing) to obtain consent before disclosing. If consent is given then the reference may be disclosed. If consent is denied however, then the reference may still be released. A number of factors need to be taken into account:

- whether the University owes a duty of confidentiality to the referee;
- whether steps have been taken by the University to obtain consent;
- whether the referee is capable of giving consent, for example, he/she may have died, retired or moved on to another organisation;
- whether the other individual has refused to give consent to the disclosure;
- whether the reasons given by the referee denying consent to disclosure are valid;
- whether the identity of the referee's could be removed so that that the data subject would be unable to identify the author.

Although there is no legal obligation to give a reference about a current / former student or employee, it is the University's policy to give a reference wherever possible. When providing a reference you are deemed to owe a duty of care to both the recipient and the subject. The legal duty of care is a duty to take reasonable steps to ensure that:

- Any factual statements are accurate;
- Any adverse opinion that may be expressed is based on accurate facts;
- Factually accurate statements made in the reference are not presented in a way that gives an unfair or misleading impression of the subject.

Implications of not taking these steps could include, for example, a subject of a reference suffering loss or damage if they fail to get a job because of an over-critical reference. Similarly, the recipient of a reference might suffer loss or damage as a result of taking on an employee or a student on the basis of a reference that is not objective enough or is insufficiently balanced. From a University perspective, the legal ramifications of not being able to demonstrate that reasonable steps were taken to ensure that legal duty of care could include legal actions taken by the recipient or the subject.

When writing the reference it is also important to understand that under the Data Protection Act 1998, certain information is classed as "sensitive personal data". This means that it must not be acquired, recorded or disseminated without the subject's explicit consent or a clear legal reason. This applies to information relating to someone's criminal record, physical or mental health, racial or ethnic origin, political opinions, religious beliefs or sexual life. This information cannot be

disclosed – in this context within a reference - without the subject's explicit consent. However, information about a subject's disciplinary record with the University may be included in a reference as long as it does not also reveal activities that have led to a criminal investigation or convictions.

### **Practical advice**

When writing a reference it is important to remember the following points:

1. Under the Data Protection Act, the data subject is not entitled to a copy of the reference by the giver (in this case the University) but can obtain a copy from the third party recipient organisation. Therefore as a matter of good practice, it is important that you should be prepared to disclose and stand by any reference you write, it is helpful to indicate in the reference whether you consent to a copy of the reference being disclosed to the data subject.
2. Indicate how you know the candidate e.g. employment / educational / personal capacity.
3. Indicate your relationship to the data subject e.g. line manager, personal tutor, previous employer, friend of the family etc.
4. Indicate where the data subject works, what their job is and how long they have been employed there.
5. Provide a succinct and concise description of the main duties.
6. Opinions expressed, should be marked as such, and strongly positive or negative opinions must be based on accurate facts. Always remember to be FAIR, ACCURATE and BALANCED, ensure that your statements are based on the entire time that you have known the subject and not just the past month.
7. If the reference request asks you to provide information about absences, you are permitted to state the data subject's attendance record, however, you cannot disclose WHY the data subject was off without explicit consent. If you do not have access to this information, you should state this in your response.
8. Finally confirm if you are recommending the data subject or not. Your reasons must be based on factual, accurate statements.

Where in doubt, refer to more senior colleagues, a member of Personnel, or the Data Protection Officer.

### **Interview Notes**

Applicants, both staff and students, will normally be entitled to gain access to interview notes about them that are retained as part of the interview record. Interviewers should ensure that the personal data that is retained can be justified as relevant and necessary for the recruitment process. After the interview process notes that are no longer required should be confidentially destroyed by all members of the interview panel.

Application forms and formal interview notes should be retained for at least 6 months from the date of the interviews. It is advisable to inform applicants if you wish to retain the information for longer than this.

## **Annex 1 – Example Staff Reference**

Mr Smith  
*Director of Marketing*  
University of Glamorgan  
Scott Road  
GL2 3NX  
*31 January 2010*  
Dear Mr Smith

Reference for Joe Bloggs, Vacancy Ref 3355

Thank you for your letter dated 1 January 2010, seeking a reference for Joe Bloggs in respect of his application for the Marketing Officer post at the University of Poppleton. I hope that the following information is helpful to you. With reference to Data Protection considerations, please note that I have no objections to you providing a copy of this reference to Joe if requested.

Firstly my knowledge of the candidate is in an employment capacity. I am Joe's line manager and have been so since Joe joined the University's Marketing Office as a Marketing Assistant in July 2007. Joe has undertaken a range of duties within the Marketing Office. These range from.....

Joe has demonstrated great diversity and adaptability in his role as Marketing Assistant and key achievements include the redesign of the Marketing website, publishing the Alumni magazine (from its first edition in Autumn Term 2007) and leading the marketing initiatives for the Summer open days. Although Joe has not been responsible for managing people in his work, as required in the Marketing Officer post, his ability to get on with people and skills of adaptability would certainly suggest that with appropriate training he would be comfortably able to take on this new area. With regard to managing projects, that is not a skill that Joe brought with him to his current role, but with ongoing training Joe has made major progress in learning how to better plan tasks and projects. Although Joe's work has generally been of a high standard, there have been occasions where Joe has struggled to meet deadlines. Joe has made efforts to rectify this by attending time management workshops and improvement has been noted of late.

Throughout his work as Marketing Assistant Joe has always made use of and applied his IT skills, shown initiative and has a 'can-do' attitude – skills that I'm sure from the job description, would be vital for the position of Marketing Officer you are recruiting for. Joe has the ability to work as part of a team or independently, brings individuality to his work, and enjoys very good working relations with his colleagues.

You ask in your reference request to confirm Joe's attendance record – he has had on average 15 days off sick per year since his appointment with the University (to date). His attendance record has improved in the past 12 months, with 7 days off ill. I consider Joe to be very well suited to the post of Marketing Officer and I can recommend him to you strongly. He shall be a sorely missed member of the team.

Yours sincerely

## **Annex 2 – Example Student Reference A**

Mr Jones  
*Director of Personnel*  
The Bank of London  
London  
SW1  
*15 April 2010*  
Dear Mr Jones

Reference for Sally Smith, Vacancy Ref 1234

Thank you for your letter dated 10 April 2010, seeking a reference for Sally Smith in respect of her application for the position of Graduate Trainee in Management at The Bank of London. I hope that the following information is helpful to you. With reference to Data Protection considerations, please note that I have no objections to you providing a copy of this reference to Sally if requested.

Firstly my knowledge of the candidate is in an educational capacity. I was Sally's personal tutor during her time at the University of Exeter. Sally started her studies here at the University in 2005 and graduated with an Upper Second Class BA (Hons) in Economics and French in 2009. This course of study covered a wide range of subjects including....

During her time at the University Sally demonstrated herself to be a conscientious student, she has an excellent attendance record and has always managed to meet deadlines for handing in assignments. During her time at the University of Exeter Sally has developed her confidence and was always keen to join in group discussions as an active member of the group.

I consider Sally to be very well suited to the post of Graduate Trainee and would not hesitate in recommending her for the position as Graduate Trainee.

With reference to Data Protection considerations, please note that I have no objections to you providing a copy of this reference to Joe if requested.

Yours sincerely

### Annex 3 – Example Student Reference B

Mr Jones  
*Director of Personnel*  
The Bank of London  
London  
SW1  
*15 April 2010*  
Dear Mr Jones

Reference for Sally Smith, Vacancy Ref 1234

Thank you for your letter dated 10 April 2010, seeking a reference for Sally Smith in respect of her application for the position of Graduate Trainee in Management at The Bank of London. I hope that the following information is helpful to you. With reference to Data Protection considerations, please note that I have no objections to you providing a copy of this reference to Sally if requested.

Firstly my knowledge of the candidate is in an educational capacity. I was Sally's personal tutor during her time at the University of Exeter. Due to lack of contact with individual students, I am only able to provide a reference with regards to Sally's academic record. Sally started her studies here at the University in 2005 and graduated with a Lower Second Class BA (Hons) in Economics in 2009. This course of study covered a wide range of subjects including....

During her time at the University Sally demonstrated herself to be a competent student, with the ability to achieve results. During her time at the University of Exeter Sally has developed her confidence and was always keen to join in group discussions as an active member of the group.

You ask in your reference request to confirm Sally's attendance record, Sally has missed an average of 10% of tutorials, most of these being in her first year of study. I consider Sally to be very well suited to the post of Graduate Trainee and would not hesitate in recommending her for the position as Graduate Trainee.

With reference to Data Protection considerations, please note that I have no objections to you providing a copy of this reference to Joe if requested.

Yours sincerely