

When a job reference is given, an employer, or organisation, has a common law duty to take reasonable care to provide an accurate and fair reference which does not “give rise to a false or mistaken inference in the mind of a reasonable recipient”.

A job reference is an opinion about a person and is “personal data” under the Data Protection Act (“Act”).

### **Your Right**

The Act provides individuals with a right of access to their “personal data”. The exercise of this right is known as making a “subject access request” (SAR) and can be achieved by writing to an organisation stating which “personal data” you wish to be provided with. You may be required to pay a fee, but this can only be a maximum of £10. The law also requires that a response is made to a SAR promptly, but within 40 calendar days.

More comprehensive guidance on how to make a SAR, including a template letter, can be found in our advice note “**How can I find out what information is held about me?**” which is available in the document library on our website.

### **Your Actions**

The Act contains an exemption from complying with a SAR for the **sender** of the reference. This does not mean that the **sender** cannot give you a copy of the reference, but they are not obliged to do so.

The **receiver** of the reference is required to comply with your SAR in the majority of circumstances.

In the case of a job reference, whilst you may make a SAR to the sender, it is probably best to make the SAR to the **receiver** of the reference.

### **What information should I get?**

The right of access is not a right to an actual copy of the reference, although in practice this is the usual method of providing individuals with their “personal data”. The right is to the “personal data” which is contained in the reference and this can be provided by means of a summary.

The name of any third party, i.e. the originator of the reference, or information that would identify them, does not have to be disclosed. However, even if the third party does not consent to the disclosure of their details, this does not prevent the **receiver** from providing as much of your personal data as possible to you without disclosing those third party details.

### **Confidential references**

Even though a reference may be marked “Confidential” the **receiver** must consider the extent to which you may already be aware of the information, particularly whether you are likely to know who,

in the normal course of business, is usually responsible for writing references and whether there actually is a duty of confidence owed to the third party.

It is, however, hard to see how releasing factual information, such as sickness records or allegations which have been, or should have been brought to your attention, actually breaches this duty of confidentiality.

### **What if I disagree with the content of the reference?**

You should firstly contact the sender of the reference and ask them to explain the reason for the content of the reference with which you disagree. It is usually also beneficial, if you have any concerns regarding the content of the job reference, to get a copy of your personnel file or human resources record. You may do this by making a SAR the **sender** of the reference.

Remember that a reference does not have to be all good or all bad – it must be accurate and fair. So even though it may contain details of disciplinary matters which you do not like, this may be entirely appropriate if these comments are accurate and factual.

### **What if I think the content of the reference is inaccurate?**

You may make a request for assessment to this Office if you believe that the reference is inaccurate and you have supporting documentation to this effect. This is why it is important for you to make a subject access request to the **sender** of the reference, particularly if you do not have copies of your annual appraisals etc.

A complaint form is available on the website if you wish to make a complaint to Commissioner, together with details of how the Commissioner deals with complaints.

If you believe that inaccuracies in the reference have caused you damage, or damage and distress, you may seek compensation from the **sender** through the Court. Please note that the Commissioner cannot make any award for compensation, nor assist in any action.

However, if you believe that you have been refused a job as the result of an inaccurate reference, or had a job offer rescinded, you should seek the advice of a Manx Advocate.