

The Applied GDPR gives individuals numerous rights, including the right to access, and be supplied with a copy of, their personal data, which includes opinions expressed about them. Controllers must act on requests exercising the right in accordance with Articles 12 and 15. General guidance on complying with requests is on the website.

In many cases, references contain basic, factual information such as employment dates and absence history. However, some occupations require comprehensive, detailed references.

Individuals are entitled to make a request to the controller that gave the reference and/or the controller that received the request and unsuccessful candidates often make requests to find out what was written about them in a reference.

Whilst there is no obligation to provide a reference, there is 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".

Controllers must comply with the principle of accuracy and ensure that any personal data they process, including that provided in a reference, is accurate. This also applies to verbally communicated references as they may be recorded by the receiving controller. Inaccurate personal data, in references or otherwise, can cause damage to individuals; individuals are entitled to seek compensation from controllers for any damage caused by infringements of the data protection legislation.

This advice note explains how the legislation applies to requests exercising the right of access to personal data in references.

The right of access can only be restricted if an exemption applies and the only exemptions from the right of access are set out in Schedule 9 of the GDPR and LED Implementing Regulations 2018.

No other enactment or rule of law prohibiting or restricting the disclosure of information, or authorising the withholding of information, including 'confidentiality' at common law, restricts the right of access.

There is a specific exemption from the right of access, set out in paragraph 17 of Schedule 9 to the GDPR and LED Implementing Regulations 2018, which is relevant to references. However, that exemption is restricted to "**confidential references**" **given by a controller** *.

The exemption does not apply to:-

- references given by a controller without any express indication of confidentiality, or
- any reference received by a controller, irrespective of any 'confidential' marking.

The exemption is discretionary and does not prohibit the controller from providing the individual with personal data in a confidential reference it has given. It would seem reasonable to comply with

the request, for example, if the reference is factual in nature, or if the individual is aware of appraisals of their work, or capability issues, referred to in that confidential reference.

A controller that has **given** a '**confidential reference**' can choose to take action on the request in accordance with Articles 12(3) and 15 (see the general guidance on complying with requests on the website), or apply the exemption and not take action on the request.

If the controller decides to apply the exemption and not take action on the request, it must comply with Article 12(4) and is required, without delay, and at the latest within one month of receipt of the request, to inform the individual:-

1. that it is not taking action on the request,
2. of the reasons for not taking action on the request,
3. about the possibility of lodging a complaint with the Commissioner; and
4. about the possibility of seeking a judicial remedy against the controller.

* *The 'confidential references' exemption applies to those given in respect of:*

- (a) the education, training or employment (or prospective education, training or employment) of the data subject;*
- (b) the placement (or prospective placement) of the data subject as a volunteer;*
- (c) the appointment (or prospective appointment) of the data subject to any office; or*
- (d) the provision (or prospective provision) by the data subject of any service.*

and this advice note should be read accordingly

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