



**Data Protection Division
Guidance Note Number 02/10**

Opinions Given in Confidence

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Section 14(10)(a) provides that personal data containing expressions of opinion about the data subject may be given to the data subject without the permission of the person who expressed that opinion but this does not include opinions “given in confidence or on the understanding that it would be treated as confidential”.

An opinion given in confidence on the understanding that it will be kept confidential must satisfy a high threshold of confidentiality. Simply placing the word “confidential” at the top of a page will not automatically render the data confidential. The Commissioner will look at the data and its context and will need to be satisfied that the data would not otherwise have been given but for this understanding.

Supervisors and managers will not normally be able to rely on the provision as it is an expected part of their role to give opinions on staff which they should be capable of standing over. On the other hand, a colleague who reports a matter relating to an individual in confidence to a supervisor could be expected to be protected by the confidentiality provision.

The right of access applies to appraisal and performance reports and the Commissioner considers that the confidentiality provision of section 14(10)(b)(i) cannot reasonably be applied to them.

In regard to references, it is often said that these are given in confidence. Notwithstanding this, the Commissioner considers generally that the right of access applies to them. There would need to be particular exceptional circumstances which would cause the Commissioner to be satisfied that the data would not otherwise have been given but for this understanding.