

## Editorial Policy



## Guidance Note

### Secret Recording and Secret Recording Proposal Forms

*This guidance note should be read in conjunction with BBC Editorial Guidelines ([www.bbc.co.uk/editorialguidelines](http://www.bbc.co.uk/editorialguidelines)) Section 6: Privacy.*

*In cases of doubt, further assistance can be sought from the duty Editorial Policy Adviser by telephoning*

*All Guidance Notes can be found at [edpol.gateway.bbc.co.uk/guidance\\_notes.shtml](http://edpol.gateway.bbc.co.uk/guidance_notes.shtml) (BBC internal link) or [www.bbc.co.uk/guidelines/editorialguidelines/advice/](http://www.bbc.co.uk/guidelines/editorialguidelines/advice/).*

#### Secret Recording mandatory referrals to Controller Editorial Policy

Content Producers must refer any proposal to:

- use unattended recording equipment on private property without the consent of the owner, occupier or agent for the purpose of gaining evidence of serious crime.
- broadcast any recording, including a telephone call, originally made for note-taking purposes.
- feature people in live broadcasts of comedy and entertainment programmes without their knowledge.
- broadcast secretly recorded material made by others and not gathered according to BBC Editorial Guidelines.

#### Introduction

**Secret Recording is a two-stage process: the gathering of secretly recorded material, and the transmission of the material.** Either process could amount to an intrusion and they must be considered and approved separately to ensure any invasion of privacy is justified by a clear public interest.

Secret Recording proposals for News and Factual programmes may be made using the form:

[http://www.bbc.co.uk/guidelines/editorialguidelines/assets/forms/form\\_news.doc](http://www.bbc.co.uk/guidelines/editorialguidelines/assets/forms/form_news.doc)

Proposals for Comedy and Entertainment purposes should use the form:

[http://www.bbc.co.uk/guidelines/editorialguidelines/assets/forms/form\\_entertainment.doc](http://www.bbc.co.uk/guidelines/editorialguidelines/assets/forms/form_entertainment.doc)

Proposals require an approval by the relevant senior editorial figure in each Division (or the relevant Commissioning Editor for Independents) in advance of carrying out recording. Further approval should be logged on the proposal form prior to transmission.

Secret Recording proposals should also be completed when using material gathered secretly by outside sources or when reusing material we have gathered secretly ourselves (see below)

Each Division is responsible for maintaining these records to enable the BBC to monitor and review the use of such techniques across its output. A signed record must be kept of the approval process, even if the request is turned down, and secretly recorded material must be logged. This record is required even if the material gathered isn't broadcast.

Any deception required for the purposes of obtaining material and secret recording should be the minimum necessary and proportionate to the subject matter and must be referred to the relevant senior editorial figure or commissioning editor for Independents.

### **Re-use of Secret Recording**

We should consider public interest, privacy and fairness issues when proposing to re-use secretly recorded material.

The re-use of secretly recorded material must be referred to a senior editorial figure or commissioning editor for Independents, who may consult Editorial Policy, before transmission and a record kept of the decision.

In the case of commercial channels who must comply with the Ofcom Broadcasting Code the re-use of secretly recorded material must be considered and logged by channel managers for each separate transmission.

### **Secret recordings from outside sources**

Secret recordings made by others and offered to the BBC for broadcast should pass the same tests we use for gathering our own material. If it was not gathered according to BBC Editorial Guidelines it should not normally be broadcast. **Any proposal to broadcast such material must be referred to Controller Editorial**

**Policy.** Approval will only be given if there is a clear public interest in broadcasting it, however it was obtained.

### **Secret Recording Applications: News and Factual Programmes**

All proposals to record secretly must be approved in advance by the relevant senior editorial figure in each Division or the relevant commissioning editor for Independents and where necessary Editorial Policy should be consulted.

A signed record must be kept of the approval process, even if the request is turned down, and secretly recorded material must be logged. This record includes the decision to gather the material and the decision to transmit. It is required even if the material gathered isn't broadcast.

Each Division is responsible for maintaining records to enable the BBC to monitor and review the use of secret recording across its output.

The secret recording proposal form, for both stages of the application process, can be found at:

[http://www.bbc.co.uk/guidelines/editorialguidelines/assets/forms/form\\_news.doc](http://www.bbc.co.uk/guidelines/editorialguidelines/assets/forms/form_news.doc)

It should be completed in accordance with the following advice:

#### **Subject and Behaviour to be Secretly Recorded**

An individual's right to privacy is qualified by their behaviour. People are less entitled to privacy where their behaviour is criminal or seriously anti-social. The subject to be recorded should normally be the target of any investigation, against whom there is prima facie evidence of wrongdoing or intended wrongdoing.

Any attempt to secretly record people who are not involved in committing the behaviour under investigation, especially vulnerable people or innocent victims of the behaviour; will need an exceptional public interest justification. In such cases, consideration should also be given to drawing up a protocol for those carrying out the recording, to minimise any intrusion. Advice is available from Editorial Policy.

The subject of the secret recording may be identifiable individuals, or it may be a group. Where it is a group, it may be necessary to consider whether it is appropriate to identify individuals within that group (see below: Prima Facie Evidence).

#### **Prima Facie Evidence**

"Prima Facie" means 'at first sight'. It is the information that makes it evident, without yet providing conclusive proof, that the criminal or anti-social behaviour is taking place or is intended to take place. Secret Recording may then be used to obtain that conclusive proof. Without such clear existing documentary or other prima facie

evidence, either against individuals or a group, the BBC will not normally carry out secret recording (See below: Social Research).

Where the secret recording is especially sensitive, particularly if innocent victims or vulnerable people will be captured on the recording, it may be necessary to ensure the operative witnesses the behaviour first-hand, verifying the prima facie evidence, before beginning recording. A contemporaneous log should be kept of any eye-witness accounts.

The prima facie evidence may be against a group of people rather than known individuals. For example, there may be evidence that the overcharging of visitors is widespread in the tourist service industries or that a significant number of home repair workers exploit older people. When the prima facie evidence is against a group, but not against individuals within that group, we should normally disguise the identity of the individuals to be secretly recorded.

If agreements have been made about anonymity of sources or confidentiality of information, care should be taken to ensure the proposal form does not include details that should not be made public. A balance must be struck between providing enough information for the senior editorial figure to make a judgment about the secret recording proposal, and the need to protect sources if the form becomes disclosable. If necessary, confidential information will need to be withheld from the form, but discussed personally during the referral process.

### **Social Research**

In a narrow range of cases, there may be justification for carrying out secret recording even though there is no prima facie evidence of wrong-doing by the people concerned. Such cases are normally limited to social research items, where the intention is to capture attitudes or behaviour which would not occur if the subject knew they were being recorded, for example capturing the reactions of people to a beggar in the street. As in all instances of secret recording, there needs to be a public interest in showing such behaviour.

If transmission of the material is approved, any individual who is clearly identifiable in the recording, unless merely incidental to it, should give permission for use of the material. If permission is denied the individual's identity should be effectively obscured. Any proposal for an exception should be referred by the relevant senior editorial figure (or the relevant Commissioning Editor for Independents) to Controller Editorial Policy.

### **Alternatives to Secret Recording**

Secret Recording is a valuable tool for the BBC because it enables the capture of evidence or behaviour that our audience would otherwise not see or hear. However, it should normally be a method of last resort. Misuse or overuse could discredit or devalue its impact. It should be clear that other, more open methods have been considered and shown to be likely to fail in capturing the evidence necessary to prove the behaviour.

## Method of Filming

Any deception required for the purposes of obtaining material and secret recording should be the minimum necessary and proportionate to the subject matter and must be referred to the relevant senior editorial figure or commissioning editor for Independents.

Safety issues should be considered for staff and for any contributors or other members of the public that may be involved in gathering the material. BBC Occupational Risk Management must be consulted, in good time, about any proposed "High Risk Activities", including secret filming of terrorist, serious criminal or extremist or violent political groups.

## Advice

All proposals to record secretly must be approved in advance by the relevant senior editorial figure in each Division or the relevant commissioning editor for Independents and where necessary Editorial Policy should be consulted.

It may also be necessary to consult with Programme Legal Advice. Whilst contact with PLA should be noted, the detail of any advice received should not be recorded on the application form.

## Secret Recording Applications: Entertainment and Comedy Programmes

All proposals to record secretly must be approved in advance by the relevant senior editorial figure in each Division or the relevant commissioning editor for Independents and where necessary Editorial Policy should be consulted.

A signed record must be kept of the approval process, even if the request is turned down, and secretly recorded material must be logged. This record includes the decision to gather the material and the decision to transmit. It is required even if the material gathered isn't broadcast.

Each Division is responsible for maintaining records to enable the BBC to monitor and review the use of secret recording across its output.

The secret recording proposal form, for both stages of the application process, can be found at:

[http://www.bbc.co.uk/guidelines/editorialguidelines/assets/forms/form\\_entertainment.doc](http://www.bbc.co.uk/guidelines/editorialguidelines/assets/forms/form_entertainment.doc)

It should be completed in consultation with the Editorial Guidelines Section 6: Privacy – Secret recording for comedy and entertainment programmes.

Before permission is given to transmit the material, it must be clear that those who feature prominently in the recordings (either in person or on the phone) have given

their consent. If the recording might cause embarrassment to other recognisable individuals caught on camera where consent has not been obtained, they must be disguised. Secretly recorded material should not expose people to hurtful ridicule or otherwise exploit them.

**This Editorial Policy Guidance Note was first produced on 27 May 2005.**