

## EDITORIAL POLICY GUIDANCE

### SECRET RECORDING

(Last updated: September 2011)

#### EDITORIAL GUIDELINES ISSUES

*This guidance note should be considered in conjunction with the following Editorial Guidelines:*

- Privacy  
See Editorial Guidelines Section 7 Privacy: Legitimate Expectations of Privacy and Editorial Guidelines Section 7 Privacy: Secret Recording
- Fairness and Consent  
See Editorial Guidelines Section 6 Fairness, Contributors and Consent
- Note-taking  
See Editorial Guidelines Section 3 Accuracy

*When secret recording is part of a larger-scale investigation revealing serious anti-social behaviour or crime, the Editorial Policy Guidance Note on Investigations may also be relevant.*

#### SUMMARY OF MAIN POINTS

- Both stages of the secret recording process – the recording and the broadcast – may need to be assessed separately to ensure that any infringement of privacy, at either stage, is editorially justified by the public interest it serves.
- The two stage process – considering any infringement of privacy in gathering secret recording separately from any infringement in broadcasting it – is reflected in the approval process that should be carried out before secret recording is to be undertaken or included in our output.
- If agreements have been made about anonymity of our sources, care should be taken to ensure the secret recording proposal form does not include details that should not be made public.
- The subject to be secretly 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 a strong public interest justification – the ends should justify the means.

- ‘Prima Facie’ evidence is the information that makes it evident, without yet providing conclusive proof, that the behaviour we are intending to capture secretly is either taking place already or is intended to take place. Without clear existing prima facie evidence the BBC will not normally carry out secret recording. The more serious the infringement of privacy in any secret recording, the stronger the prima facie evidence may need to be.
- It is not normally appropriate to use secret recording in an investigation simply for illustrative purposes.
- Safety issues should be considered for staff, contributors or other members of the public that may be involved in gathering the material.
- Accurate and reliable records and notes documenting what has been secretly recorded, how it was filmed and any relevant surrounding events can be an important tool for validating the authenticity of secretly recorded material. These notes should normally be made as contemporaneously as operationally possible.

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## **Introduction**

The BBC respects individuals’ right to privacy and doesn’t infringe it without good reason.

(See Editorial Guidelines Section 7 Privacy: Introduction – Legitimate Expectations of Privacy)

Secret recording will normally involve an infringement of privacy and, when it does, we must therefore ensure it is editorially justified. Our actions should be proportionate to the public interest they serve: the greater the infringement of privacy, the higher the public interest required to editorially justify it.

## Recording and Transmission: Separate Decisions

Secret recording can lead to an infringement of privacy when it is broadcast with identifiable individuals. However, the actual recording of the material can also be intrusive, regardless of whether or not it is broadcast. Consequently, both stages of the process – the recording and the broadcast – may need to be assessed separately, to ensure that any infringement of privacy, at either stage, is editorially justified by the public interest it serves.

For example, an investigation into a highly sensitive location such as a hospital uncovering poor standards of care, may necessitate the secret filming of patients, even though they may be vulnerable and victims rather than perpetrators of wrongdoing. Where we have prima facie evidence and the filming is necessary to expose serious wrongdoing, the public interest may justify the intrusion against the patients. However, a separate assessment has to be made about the transmission of the material. Broadcasting of the film of patients who were identifiable would be likely to represent a further infringement of privacy and one that is not normally necessary to exposing the wrongdoing. Consequently, we would normally take steps to disguise the identities of innocent parties to prevent any intrusion in the broadcast of the material.

(See Guidance: Anonymity)

## Approval of Secret Recording

The two stage process – considering any infringement of privacy in gathering secret recording separately from any infringement in broadcasting it – is reflected in the approval process that should be carried out when secret recording is to be undertaken or included in our output.

Secret Recording proposals for News and Current Affairs or other Factual programmes may be made using the form on the Editorial Guidelines website. These proposals include any use of secret recording:

- as an investigative tool
- to obtain material outside the UK where a country's laws make the normal and responsible gathering of material extraordinarily difficult or impossible
- for consumer, scientific or social research

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.

Secret Recording proposals for Comedy and Entertainment purposes should use the Comedy and Entertainment form on the Editorial Guidelines website.

Proposals must be referred to Editorial Policy and then require approval by the relevant senior editorial figure in each Division or, for independents, the relevant commissioning editor in advance of carrying out recording. When giving approval, the senior editorial figure or commissioning editor should note any significant considerations to be taken into account before the material is broadcast and should also state whether they wish to be consulted again prior to broadcast.

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. Each Division is responsible for maintaining its own records of proposals to enable the BBC to monitor and review the use of secret recording across its output. Each year, copies of the records will need to be made available to Editorial Policy who carry out an annual audit of secret recording.

### ***Secret Recording from Outside Sources***

Proposals to use secret recordings made by others must be referred to Editorial Policy prior to approval by a senior editorial figure or, for independents, by the commissioning editor. It is advisable to retain a record of the decision. If the BBC would not have considered it justifiable to gather the material under similar circumstances, approval will also be required from Director Editorial Policy and Standards.

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

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

(See Editorial Guidelines Section 13 Re-use and Reversioning)

The re-use of secretly recorded material must be referred before broadcast to a senior editorial figure or, for independents, to the commissioning editor. A record must be kept of the decision.

## Considering the Subject and Behaviour to be Secretly Recorded

When considering who it is appropriate to secretly record, we should take account of legitimate expectations of privacy and the public interest.

(See Editorial Guidelines Section 7 Privacy: 7.1 Introduction)

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 a strong public interest justification - the ends (i.e. the seriousness of the wrongdoing being exposed) should justify the means. In such cases, consideration should also be given to drawing up a protocol for those carrying out the recording, to minimise any infringements of the privacy of the vulnerable. Advice is available from Editorial Policy.

The subject of the secret recording may be a single and very specific individual target responsible for wrongdoing, or it may be a number of people with varying degrees of responsibility. Sometimes it may be appropriate to secretly record individuals who are representative of a particular group, or organisations who are representative of (for example) an industry, to explore patterns of behaviour in that group or industry. When we do that we will have to consider the public interest in exploring those patterns of behaviour, and whether it will be appropriate to identify the individuals or organisations in the broadcast material. (See below: Prima Facie Evidence - Social Research)

### Prima Facie Evidence

"Prima Facie" means 'at first sight'. It is the information that makes it evident, without yet providing conclusive proof, that the behaviour we are intending to capture secretly is either taking place already or is intended to take place. Without clear existing prima facie evidence the BBC will not normally carry out secret recording (See below: Social Research).

The more serious the infringement of privacy in any secret recording, the stronger the prima facie evidence may need to be. 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 spends some time witnessing the behaviour first-hand, verifying

the prima facie evidence, before beginning recording. A contemporaneous log should be kept of any relevant behaviour witnessed first-hand.

### *Consumer Research*

Sometimes, the prima facie evidence may be against a group or, for example, an industry rather than specific known individuals or organisations. For instance, 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 specific individuals or organisations within that group, we should normally disguise the identity of the individuals when the material is broadcast, unless they consent to being identified or their behaviour is such that there is a clear public interest in exposing their identity.

### *Scientific and Social Research*

In some cases, there may be justification for carrying out secret recording even though there is no prima facie evidence of wrong-doing. Such cases are normally limited to scientific or 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. There should normally be a public interest in showing such behaviour.

Any individual who is clearly identifiable in the recording, unless merely incidental to it, should give consent for broadcast of the material. If consent is not asked for, or is refused, the individual's identity should be effectively obscured. Any proposal in these circumstances to identify individuals or organisations without their consent should be referred to Editorial Policy.

## **Considering 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, misuse or overuse could discredit it or devalue its impact; it should normally be used in the public interest and when no viable alternative method exists

In investigations that expose wrongdoing, secret recording should be evidentially significant to proving the wrongdoing - either in its entirety or an element of it. If other evidence exists which will make the wrongdoing irrefutable, it will not normally be appropriate to use secret recording.

It is not normally appropriate to use secret recording in an investigation simply for illustrative purposes.

As we seek to engage audiences in content investigating matters of public interest, there may be times when we wish to carry out secret recording in such a way that the audience will find it particularly entertaining – for example, with an amusing undercover set-up or sting of a rogue businessman. Carrying out secret recording in an entertaining way can often be justified, but it must be clear that it still serves a serious purpose at the same time, offering evidence that proves wrongdoing (or an element of it) in the public interest.

## Method of Filming

Safety issues should be considered for staff, 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, whenever there is the possibility of those being secretly filmed turning violent (for example, if they discover they are being filmed or when it is revealed to them on a later date). In particular, advice must be sought when proposing to carry out any “High Risk Activities”, including secret filming of terrorist, serious criminal or extremist or violent political groups.

When considering how the secret recording will elicit evidence, the cover story or any invitations to targets designed to encourage them to talk should be carefully thought through, avoiding any unjustifiable entrapment. Advice is available from Editorial Policy and Programme Legal Advice.

### Authentication of Material

Anyone carrying out secret filming should be aware that their work may come under intense scrutiny, particularly when the secretly recorded material reveals wrongdoing that leads to prosecution or may have a commercial impact on the subject of the recording. Withstanding such scrutiny will often depend on the ability of the production team to demonstrate the authenticity of the secretly recorded material.

Accurate and reliable records and notes documenting what has been secretly recorded, how it was filmed and any relevant surrounding events can be an important tool for validating the recording. These notes should normally be made as contemporaneously as operationally possible.

Particular attention should be given to the ability to authenticate material on occasions where the person carrying out secret recording has to operate alone in the field.

(See Guidance: Investigations)

(See Editorial Guidelines Section 3 Accuracy: 3.4.10 Note-taking)

## Legal Considerations

The privacy issues that arise from secret filming, or any associated deception for gathering the material, may also raise legal risks for the BBC and individual members of the production team. It may be necessary to consult with Programme Legal Advice. Any contact with PLA should be noted on the Secret Recording approval form – however, the detail of any advice received should not be recorded.