

	<p>Please take Notice: Information supplied is based on our opinion reading - The Constitution, Conventions, law, Case Law, Rules, Regulations and Standards in the Republic of Ireland only. This sheet is drafted by lay litigants and might not be correct.</p> <p>This is not legal advice, but the opinion of the author(s). Please consult your legal advisor</p> <p>Opinions and suggestions will be appreciated.</p>
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Information sheet:

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Information sheet: Photo, Video and Audio Recordings

Question:

Is it legal to video – photo or audio record all my dealings with social services or other professionals or persons during family law proceedings?

Answer:

In brief: Yes – but only if you adhere to the following conditions (based on court rulings):

1. You are not allowed to share the recording with any third party without the permission of the person(s) recorded or an order of the court.
2. Only recordings containing possible future evidence may be kept. The rest to be destroyed.
3. The recordings must be kept safely – in such a way that it will not fall into the hands of a third party.
4. When not needed any more it must be destroyed.

The Law:

The right to privacy is an unenumerated right under the Constitution of Ireland. The same right is also guaranteed in the European Convention of Human Rights Act.

The key word is “Privacy” but right of privacy or, as it has been put, a right “to be let alone”, can never be absolute.¹

Then, remember why you recorded it – evidence – technically you are guilty of an offence if you have evidence that can be used in a hearing, not disclosing it or destroying it.

From experience:

1. Dishonest social workers, other professionals or opponents will not give permission for you to record them. They will object to it and cancel meetings if they know it is happening. It is suggested to use commercial available audio recorders hidden in your clothing or handbag. Honest persons will not object.
2. Video and photo recording is usually not allowed in some state agency buildings without permission. This does not prevent you from using a hidden body-cam. Permission is usually granted to make video recordings or take photos during access of parents and the children.
3. Do not attempt to make a video, photo or audio recording in a court room, not even with

¹ Note *Norris v. Attorney General* [1984] I.R. 36 p. 64

your secret body-cam. It is illegal. An audio recording may be made by a court certified stenographer. The court also have Digital Audio Recording equipment installed and you can request it to be switched on during the hearing and afterwards request a DAR copy of the proceedings.

4. Social workers, other professionals. solicitors, CFA/Tusla management and others will attempt in coercing you to hand over the recordings. They may even, and did in the past, get a member of An Garda Síochána to illegally confiscate it. Remember also by law that Gardaí are allowed to lie to you, but you are not allowed to lie to them. Inform them that you wish to consult with your legal team before any action is taken.
5. Your recordings should be analysed and notes made, as soon as possible. Name the files properly. Store at least 2 copies in different locations. Do not use CD's. Use portable drives or memory sticks.

Question:

How can I use the recordings legally?

Answer:

1. Note the evidence in the recordings. Own summary example:
 - a) 22/01/2001 at 3m22s Dr. Mark - Peter is too fat
 - b) 25/03/2001 at 44m16s Ms Little - will never see children again
2. After receiving evidence in summary, draft your reply in a Statement or Affidavit or notes for court – Examples:
 - a) On page 14 of his report, Dr. Mark states that he examined Peter on 19 January 2001 finding Peter to be underweight. On 22 January 2001 Dr. Mark stated the opposite. His words were “Peter is at least 3 kilogram overweight and he should be put on a diet”.
 - b) Ms Little caused my wife to cry the whole night after she clearly stated that there is nothing we could do and that we will never see the children again.
3. Keep the recordings ready for playing in the court if your arguments are denied. I suggest a laptop or similar device with a media player that is easily controlled and speakers. Ensure the device's battery is fully charged.

Case law about recordings in Child Care matters:

Key case law to note and quote:

- a) Mr Justice Humphreys J. ruled on 25 February 2016 in the High Court matter P.H. & anor - v- Child and Family Agency [2016] IEHC 106 in paragraph 31 “The reality of the situation is that there is a huge imbalance of power as between the first named applicant..... on the one hand, and a State agency That the agency is denying certain of the claims of the first named applicant while, it is said, trying to prevent her from making a record which would support her account, can only rub salt in the wound of her powerlessness in this situation. Permitting persons the subject of the agency’s attentions to record interactions with the agency is the least that can be done as a first step to attempt to redress the imbalance as between parties in such a situation. The agency should cease to object to recording by persons in such situations.”

Several other unpublished rulings are known about.²

² Due to In Camera Rule specific information not published here. Fact confirmed by author. Legal advisors can contact us to get further information on cases mentioned.

- b) HSE v AN - 15 May 2008. IEDC. HSE wanted all the recordings handed to them. Judge refused and ordered copies to be handed to State Solicitor for the County when evidence of offences were confirmed.
- c) HSE v AN – 22 October 2008. IEDC. Defendants allege perjury committed by psychologist. HSE and psychologist objects to use of recordings as “it was made illegally without knowledge of the psychologist”. Court ruled that it should be played to counsel and the psychologist only, not to the Court. (Psychologist changed his evidence. This was a key factor in this case.)
- d) HSE v M – February 2012. IEDC. HSE ask for order prohibiting M from recording. Court rule that M may record and should not be prevented. See conditions above.
- e) JF v HSE – 15 September 2010. IEHC. JF application for Judicial Review after HSE suspended access as punishment for recording. HSE denied this to be the reason. JF played recording in court where social worker clearly state that access is suspended because of recordings. (Social workers did not know of second recorder after they confirmed first one was switched off). Access restored and HSE instructed to investigate social workers' lies.
- f) VTF v HSE – 15 November 2012. IEHC. HSE object against evidence in recordings as “recordings not certified as not tampered with. Applicant must have it certified at his expense”. Court rules that HSE can receive a copy and have the recording examined at their expense. (They never did)
- g) Unconfirmed case – HSE v Unknown parent – 2007 – IEDC – Judge apparently cited with Social workers warning parent not to record.

Other cases that can be referred to for further reading:

Kennedy v. Ireland [1987] 1 I.R. 587, *Stanley v. Georgia* (1969) 394 U.S. 557, *Terry v. Ohio* (1968) 392 U.S. 1, *McGee v. A.G. & Anor* [1973] IESC 2; [1974] IR 284, *Conway v. I.N.TO.* [1991] 2 I.R. 305, *M. v. Drury* [1994] 2 I.R. 8, *Cogley v. R.T.E.* [2005] 2 I.L.R.M. 529. and many more.

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Comments, suggestions by email to andy at aps dot ie
