



Your rights during a police interview in Queensland

Date: Sunday July 30, 2023

A police interview, also commonly referred to as an electronic record of interview, occurs when police formally question an individual about an alleged criminal offence.

A police interview is often the start of a criminal matter and can make or break a case. If you do participate in a police interview, regardless of whether it occurs in a formal or informal setting, it is important to know that it can later be used as evidence against you in Court.

Criminal lawyers generally have a default response when answering the question, “*should I participate in a police interview?*”, and that answer is almost always no.

In Queensland, under the *Police Powers and Responsibility Act 2000* (Qld), an individual has the right to remain silent. It is important to highlight that exercising your right to remain silent cannot later be used against you.

Questions by police that must be answered

When exercising your right to remain silent, there are generally only three factual matters that you are obliged to provide to the police:

1. your name;
2. your address; and
3. your date of birth.

You should not answer any other questions unless you have first obtained legal advice.

Police interview process in Queensland

If the police are investigating an individual about an alleged criminal offence, and at times even if they have charged an individual with an offence, they will offer an accused the opportunity to participate in an electronic record of interview (a police interview).

The interview will usually occur at a police station and can be both audio and/or video recorded. However, there are other circumstances where an interview may occur in an informal setting (for example, on the street).

Before an interview commences, police are required to provide you with the opportunity to speak to a lawyer, friend or relative and notify you of other safeguards, such as obtaining an interpreter and your right to remain silent.

It is important to remember that you are not required to go with police to the station unless you have been arrested. If you have been arrested, police can detain you for up to 8 hours with only 4 hours' worth of questioning.

When you have a lawyer involved at your police interview, rarely will you be required to remain arrested for questioning for 8 hours without the matter progressing in some way.

The risks of participating in a police interview

Many individuals want the opportunity to tell their side of the story to police. Despite the good intentions, this can have serious adverse consequences. There are many risks associated with participating in a police interview:

- Any admissions or lies made by an individual can be used against them in Court and assist the prosecution in proving the case against them and/or attacking their credibility;
- An individual may disclose information that was not otherwise known to police. This information may strengthen the case for the prosecution and result in investigation/s into further charges;
- An individual's statements may be misinterpreted in the future. Often, a police interview can be played to a jury at a trial. An individual is commonly stuck with the version that they gave to police at the time of their interview, and this can result in strategic disadvantages; and
- For the most part, there is a significant power imbalance in an interview. The police know the questions they will ask and the evidence they already hold and will often seek to employ the element of surprise in an interview. There may be a variety of reasons a person is surprised by evidence held by police, but where there is a video or audio recording of such a reaction, that can become very prejudicial evidence in a subsequent criminal trial.

Declining to participate in a record of interview can usually not be used as evidence against an accused. If the person is then charged with an offence, as unfortunate as that may be, that will generally mean they can receive and review the police evidence without recordings of an interview in their own time. Often, this is a far more foreseeable way to prepare the defence case.

The decision to participate in an interview should be approached on a case-by-case basis and is ultimately a question of whether the benefits outweigh the risks.

A police interview and questioning can be an overwhelming experience. An individual should first obtain proper legal advice from a lawyer experienced in criminal law before participating in any informal or formal police interview.

Getting help from a criminal lawyer

Gilshenan &Luton are highly experienced criminal lawyers who deal with police officers daily. We have a wide range of experience assisting individuals through the stages of a police investigation and interview.

If you have been contacted by police to participate in a police interview, you should contact Gilshenan &Luton for legal advice and assistance. We are available 24/7.

Contacting Gilshenan &Luton Criminal Defence Lawyers

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