



You, your mobile phone and the Queensland Police

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It's been a common query in recent times; do the Police have the right to access content on your mobile phone? It's not clear cut, but here's our advice.

Your mobile phone might hold what you consider to be private information and not necessarily available to anyone else. In [a case in the US in 2014](#), this view that it is "private", was one of the reasons why a search of a phone without a warrant was "unconstitutional". Further, any evidence found on a mobile wasn't capable of being used against the owner of the phone.

How does this hold up in Australia?

In Australia, and particularly Queensland, that's not the story. If you find yourself subject to a Police search, under an official Police warrant, with a Police officer searching your home, residence, office or car, you can now be compelled to give the Police the PIN code of your mobile telephone or other electronic device.

Recent amendments to the *Police Powers and Responsibilities Act* mean that it's now an offence to refuse to give Police the P.I.N. to unlock your mobile phone.

Section 154A of the *Police Powers and Responsibilities Act*, make it a criminal offence under section 205 of the Criminal Code if you refuse to provide the PIN to the Police. Section 205 carries a maximum penalty of five years imprisonment.

In [a recent Queensland Supreme Court ruling](#) about the Queensland police's power to compel you to provide your mobile telephone's PIN code, one Queensland Supreme Court Judge said:

"The potential for self-incrimination by a suspect should that person answer questions acknowledging ownership or possession of the phone, or knowledge of the access information or familiarity with how to use the phone, is obvious."

Reading carefully, his honour Judge North seems to be saying that once you acknowledge owning the mobile telephone, and then you refuse to provide the Police access to the device, you're likely going to be in trouble.

Do the Judge's comments provide a legal loophole or allow you to disobey a lawful direction or a search warrant?

Well, that's not really clear and no-one, especially a lawyer, should ever tell you how to break the law, or how to avoid the legal consequences of unlawful or criminal behaviour.

Judge North's comments do make it clear, however, that if you answer questions where you acknowledge ownership of a mobile phone, then there is a potential for self-incrimination.

We have previously written about your ["Right to Silence"](#) if interviewed or arrested by Police.

In the early stages of a Police investigation, you cannot be compelled to answer any questions beyond your name, address and your birthday. These recent changes to the law regarding mobile phone access by Police, make that right to silence, and your use of it, even more important.

If you're being investigated for a criminal offence or you've been charged with a criminal offence and you are seeking legal representation, [please contact us](#).

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