

Access-to-information laws: they're there, if MDs want to use them

Doctors may be in the front line when it comes to health care issues, but they are well back in line in gaining access to the government records in which these issues are discussed.

Consider the recent federal policy adopted on the use of marijuana for medicinal purposes. This Health Canada initiative had been in the works for several years, and if physicians had been monitoring its development via access-to-information legislation they might have followed and shaped these regulations as they developed. Instead, they were presented with a *fait accompli*. In the past few months, information obtained through the legislation has produced many headlines, including several dealing with health care: "Health care cuts in Canada could create shortfalls in terror attack: report" and "Hospital pharmacist warned about drug memo issued in 1998, outlined ways to cut risk of deaths" are but 2 examples.

So where to begin? Before trying the formal process, call the agency in question to see what information is available without using access-to-information laws. If the only route is this legislation, then ascertain whether the information you want is held by an agency covered

by it. Prince Edward Island is the only major Canadian jurisdiction without access-to-information legislation, although not all provincial-territorial acts cover local municipalities or special bodies like hospitals and social-service agencies.

When you do apply, be as specific as possible. List specific dates and the type of records being sought, and use a focused approach that concentrates on a single subject (such as medicinal marijuana). Also, remember that you are applying to receive records, not to have specific questions answered. Indicate that you are willing to discuss the information you are seeking.

Most jurisdictions want requests directed to a specific agency, along with the applicable application fee, and some require the use of forms. Once you have filed your request, remember:

- This is not an instant-disclosure process. Records do not have to be released for at least 30 days, and this period can be extended if third-party data are involved or consultations are required.
- Many records are exempted from disclosure for reasons ranging from commercial confidentiality to law-enforcement matters. Some issues,

such as cabinet confidences, are either totally excluded or exempted from release for many years. Some exemptions are discretionary. In



Documents obtained under access-to-information last summer revealed that Ottawa was planning to pitch plans for revamping the Indian Act by going over the heads of chiefs, including Matthew Coon Come, national chief of the Assembly of First Nations.

Steps in making a federal access-to-information request

Federal access-to-information requests are sent directly to the departments involved. Applications are available at infosource.gc.ca/Info_4/atip/Request-Frms_e.html. Here are the steps needed to make most of them:

- Identify the target department and ensure that it is the correct one. For example, is Health Canada the agency responsible for developing *Canada's Food Guide*?
- Ask for specific records relating to a specific time period. What submissions were made concerning *Canada's Food Guide* in April and May? Were internal studies conducted? Focus groups? What costs were involved?
- File your request (this costs \$5) AND indicate that you want to be contacted when the request is received.
- Be persistent and monitor progress. Has the department gone to the appropriate branches? What's delaying the response? Why are the fees so high? Keep a log of the service you receive.
- Check what's been received. Why is correspondence from the food industry missing? The exemptions that prevented the release of documents on policy advice and commercial confidentiality need an explanation.
- Review whether you need to appeal. If crucial data are withheld, seek help from the federal information commissioner.
- Don't stop there. Ask for further details, and then publicize the information you have received — or the failure of the department to provide it. — *Ken Rubin, Ottawa*

most access legislation there is a limited public-interest provision that only occasionally overrides some of the exemptions. Not all agencies or even branches within an agency interpret exemptions the same way.

- Fees can be assessed for manual or computer searches, record preparation, computer programming and copying. This can add up. Records like emails can provide key behind-the-scenes information, but may generate large fee estimates. Narrowing an application's scope or viewing records in person may reduce the cost.

Once an application is made, track its progress through calls and a written log. If there are delays or excessive fees, you probably have a right to complain to an information commissioner or ombudsman. Remember, the art of negotiation is part of the process.

When records are received, confirm that they are what you wanted. Your appeal rights include complaining about exemptions, fees and incomplete responses, or eventually taking the matter to court.

Getting records does not end your work, since publicizing the information you have received or the lack of response to your request should be part of any access strategy. This could even include sharing your experiences with readers of this journal.

Doctors should also remember that access-to-information rules can be a double-edged sword, because the public can use its provisions to make physicians more accountable in matters such as medicare payments and negligence claims. When this happens, doctors become the third parties and may be consulted by government authorities. Differing jurisdictions treat data disclosure

differently. For instance, information on doctors' salaries and extra-billing is protected in some provincial acts but not in others. In British Columbia, access legislation covers professional governing bodies, including disciplinary records of the College of Physicians and Surgeons.

What access laws can do (and could do much better if they were radically improved) is create more transparency for everyone. To engage in the process, you will need curiosity and a good helping of persistence. The skills of a surgeon cutting through to the essential, combined with the patience and information-seeking skills of a family doctor, are bound to be assets in this venture. — *Ken Rubin, Ottawa*

Ken Rubin is a public-interest researcher who has used the access-to-information process many times over the last 20 years. He has a special interest in health, safety and environmental concerns, and is a consultant to *CMAJ* on these issues.

Attacks on US a crime, not act of war, conference concludes

World experts in peace and health have declared that the Sept. 11 attacks on US civilians should be defined as a crime, not an act of war. The declaration was made at the Peace Through Health conference at McMaster University, held a month after the terrorist attacks. It attracted 120 participants from 19 countries, and they stated that the US should respond with legal, not military, means.

An organizer of the conference, which was cosponsored by the *Lancet*, said "we came up with the declaration at the request of everyone." Hamilton psychiatrist Joanna Santa Barbara said only a few participants didn't support it, and that was primarily because they did not consider it strong enough.

The declaration (www.humanities.mcmaster.ca/peace-health/home.htm) stated that the conference participants regard "war as a public health emergency and peace as a fundamental determinant of health."

"We can keep patching people up," said Santa Barbara, "but the real cure is to stop the violence."

The declaration concluded: "We urge serious effort to understand the underlying conditions that have led us to

this crisis. The purpose of seeking to understand is not to excuse the perpetrators, but to prevent similar catastrophes happening in the future."

Meanwhile, Physicians for Global Survival, a national organization of 1000 physicians, is lobbying for Canada to assume the role of peacemaker and help find solutions through international law, not military action.

"We believe the apprehension and extradition of suspects in the Sept. 11 crimes and justice for these horrendous crimes can be accomplished through negotiation and police action with many nations acting in coalition with the UN," said President Neil Arya. "The current military action against Afghanistan is itself an injustice to the Afghan people."

Santa Barbara said McMaster's Peace Through Health network will follow-up on the declaration by contacting politicians and others. Next year, McMaster is launching a new, multidisciplinary Peace Through Health Department. The university is also raising money for the world's first interdisciplinary chair in Peace Through Health, which was announced at the conference. — *Barbara Sibbald, CMAJ*

Manitoba MDs angry over extended hours for alcohol sales

Manitoba physicians have taken a vocal stand against extended hours for alcohol sales in the province. A new provincial law that took effect in August allows alcohol sales on Sundays, and Dr. John Loge of Flin Flon says this will lead to increased consumption. "I can't think of any reason other than profit for wanting to extend alcohol sales from 6 to 7 days a week," he wrote in supporting a local bylaw that would override the provincial law. "We see no benefit in the promotion of more alcohol consumption, only major detriment." His letter to the Flin Flon city council was signed by 9 other local FPs.

Physicians in The Pas are also considering similar action, the November edition of the Manitoba Medical Association's *Inter-Com* reported. "It's quite apparent that not everyone is happy with liquor stores being open 7 days a week," said Dr. George Skelly. "I've heard complaints from colleagues, neighbours and business people alike." — *Patrick Sullivan, CMAJ*