

**Office of the Information and Privacy Commissioner
Province of British Columbia
Order No. 261-1998
September 9, 1998**

INQUIRY RE: A media request for access to records regarding the administration of the medication Ritalin by school district staff to elementary school students: School District No. 35 (Langley); School District No. 75 (Mission); School District No. 43 (Coquitlam); School District No. 38 (Richmond); School District No. 41 (Burnaby); School District No. 36 (Surrey); and School District No. 39 (Vancouver)

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1. Description of the review

As Information and Privacy Commissioner, I conducted seven written inquiries at the Office of the Information and Privacy Commissioner (the Office) on March 11, 1998 under section 56 of the *Freedom of Information and Protection of Privacy Act* (the Act). All of these inquiries arose out of a request by the applicant, an investigative staff reporter for The Province newspaper, for a review of decisions by seven different school districts (collectively referred to as the Districts) to withhold records regarding the administration of the medication Ritalin by school district staff to students in elementary schools and to refuse to create records which would summarize this information. The applicant wishes to obtain this information in the context of her on-going investigation into the rate of diagnosis of Attention Deficit Hyperactivity Disorder and Attention Deficit Disorder, and the treatment of these disorders with methylphenidate, a stimulant of which one of its preparations is sold as Ritalin. It is the applicant's belief, based on her research to date, that the rapid increase in the rate of diagnosis of both Attention Deficit Hyperactivity Disorder and Attention Deficit Disorder with methylphenidate and other stimulants in Canada in the past five years may pose a serious public health risk to children in British Columbia.

The Seven Districts which are the subject of individual inquiries are School District No. 35 (Langley), School District No. 75 (Mission), School District No. 43 (Coquitlam), School District No. 36 (Surrey), School District No. 41 (Burnaby), School District No. 38 (Richmond), and School District No. 39 (Vancouver).

Because the issues in each of the seven inquiries are the same, I have consolidated the seven inquiries ("the inquiry") in one order. I have not singled out particular school districts, unless they made unique or unusual submissions on the application of a particular section of the

Act. The minor variations in the initial submissions of the applicant are not truly significant or material. When they are, I have tried to take note of them.

2. Documentation of the inquiry process

On September 25, 1997 the applicant, Ann Rees, submitted a request under the Act to the Superintendents of more than twenty school districts for disclosure of information respecting the number, grade, and sex of children at each school within each District to whom district staff administer the medication Ritalin during school hours. The form letter, which the applicant asked each Superintendent to send to each school principal within each school district, provided in part:

... I wish to receive copies of any documents indicating the number of children at your school who are receiving Ritalin from a school employee during school hours. I also wish to know the sex of the child and grade he or she is attending. Such information may be contained in materials provided to the school nurse. I am aware that parents are also required to fill out forms requesting that their child be administered medication of any kind. The school secretary or another person administering the medication may also keep a list.

I realize that the actual materials may have to be heavily severed to remove all personal information. I am therefore prepared to waive the necessity of providing me with copies of the original forms. A letter from your school with the total number, sexes and grades (i.e. one boy in Grade 3, two girls in grades six and seven) would be sufficient

The Districts refused to provide the applicant with the information requested on the basis that its disclosure would give rise to an unreasonable invasion of third-party personal privacy. Some Districts also relied on section 34 of the Act. The applicant requested a review of the decisions of each of the seven Districts to refuse access to the requested information. The applicant's grounds for each review are that "the public body improperly applied exemptions and/or failed to sever as required by the Act."

During the mediation process, the applicant narrowed her request for information to the number and sex of students in each elementary school in each District who are receiving Ritalin from a school employee during school hours, subject to some conditions which proved unacceptable to the Districts. However, at the inquiry stage, the applicant made it clear that her request was restricted to information relating to the total number of students in each elementary school in each District who receive Ritalin during school hours, broken down by sex if possible.

Those school districts which are not the subject of this inquiry responded to the applicant's request by providing a summary of the information requested, or by providing some information responsive to the applicant's request:

As of February 3, 1998, approximately half of the School Districts have provided me with some information as to the number of students in their schools who are

receiving Ritalin from school employees during school hours, broken down by sex and grade. Some of the School Districts have provided incomplete information or have not broken down the information by sex or grade, while others containing small schools have provided the information only on a district, as opposed to individual school, basis.

... The Greater Victoria School District provided me with the information requested for every school within the district.... (Affidavit of Ann Rees, paragraphs 1.13 and 1.15)

All of the Districts in this inquiry refused the applicant access to any existing records containing the information requested on the basis of section 22 of the Act. None of these Districts provided the applicant with a summary of the information requested. The Districts of Langley, Surrey, Burnaby, Vancouver, and Richmond refused to provide a summary on the basis that they are not required under the Act to create a record where none currently exists. These Districts claimed that they would have to take on “a research project” to provide the requested information, which they say is not required under the Act.

3. Issues under review and the burden of proof

There are two issues under review in this inquiry. The first is the Districts’ application of section 22(3)(a) of the Act to any records showing the number and sex of students in each elementary school who are receiving Ritalin from a school employee during school hours. The second issue is whether section 6 of the Act, which imposes a duty on public bodies to make every reasonable effort to assist applicants, includes a duty to create a record of the type requested by the applicant in this case.

The relevant sections of the Act are as follows:

Information rights

- 4(1) A person who makes a request under section 5 has a right of access to any record in the custody or under the control of a public body, including a record containing personal information about the applicant.
- (2) The right of access to a record does not extend to information excepted from disclosure under Division 2 of this Part, but if that information can reasonably be severed from a record an applicant has the right of access to the remainder of the record.

Duty to assist applicants

- 6(1) The head of a public body must make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely.

- (2) Moreover, the head of a public body must create a record for an applicant if
 - (a) the record can be created from a machine readable record in the custody or under the control of the public body using its normal computer hardware and software and technical expertise, and
 - (b) creating the record would not unreasonably interfere with the operations of the public body.

Schedule 1 Definitions

In this Act,

“personal information” means recorded information about an identifiable individual, including

- (a) the individual’s name, address or telephone number,
- (b) the individual’s race, national or ethnic origin, colour, or religious or political beliefs or associations,
- (c) the individual’s age, sex, sexual orientation, marital status or family status,
- (d) an identifying number, symbol or other particular assigned to the individual,
- (e) the individual’s fingerprints, blood type or inheritable characteristics,
- (f) information about the individual’s health care history, including a physical or mental disability,
- (g) information about the individual’s educational, financial, criminal or employment history,
- (h) anyone else’s opinions about the individual, and
- (i) the individual’s personal views or opinions, except if they are about someone else;

Disclosure harmful to personal privacy

- 22(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party’s personal privacy.
- (2) In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party’s personal

privacy, the head of a public body must consider all the relevant circumstances, including whether

...

(b) the disclosure is likely to promote public health and safety or to promote the protection of the environment,

...

(f) the personal information has been supplied in confidence,

...

(3) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if

(a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation,

...

(4) A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if

...

(b) there are compelling circumstances affecting anyone's health or safety and notice of disclosure is mailed to the last known address of the third party,

....

Section 57 of the Act establishes the burden of proof on the parties in this inquiry. Under section 57(2), if the record or part that the applicant is refused access to contains personal information about a third party, it is up to the applicant to prove that disclosure of the information would not be an unreasonable invasion of the third party's personal privacy.

Section 57 of the Act is silent with respect to a request for review about the duty to assist an applicant or the duty to create a record for an applicant under section 6 of the Act. I decided in Orders No. 106-1996, May 28, 1996; and No. 110-1996, June 5, 1996 that the burden of proof is on the public body for both of these issues.

4. The records in dispute

The records which have been withheld by the Districts consist primarily of a significant number of forms headed "Request For Administration of Medication" (also known as a Ministry of Health form "HLTH 41"). Each form indicates the name of the school board and generally provides space for the following information: the name of the child, the child's birthdate, the name(s) of the parent or guardian, the name and comments of the child's doctor, the medication required (prescription directions for usage), the name and signature of the public health nurse, and the names and signatures of the district staff responsible for administering the Ritalin. Some forms indicate the name of the school. These records thus do not automatically contain all of the types of information sought by the applicant (e.g., sex or name of school).

The other types of records which contain some (but not all) of the information sought are medical alert forms, permanent student records, and student confirmation forms. Some schools keep records which summarize the names of students who are required to take a form of medication during school hours. Most do not.

5. The Province's case

The applicant is not requesting access to information which could disclose the identity of any elementary school student who may be taking Ritalin. (Submission of the Applicant in the Langley case, paragraph 3.1) What she wants is the “total number of children at each elementary school (broken down by sex, if possible) falling within the geographical areas covered by the Public Bodies who are receiving Ritalin from a school employee during school hours.” (Reply Submission of the Applicant, paragraph 1.1)

I have presented below the applicant's submissions on the application of specific sections of the Act to the information in dispute.

6. The Seven School Districts' case

The Districts in this inquiry refused to disclose the records requested on the grounds that it would be an unreasonable invasion of the personal privacy of students. I have presented below their specific submissions on the application of various sections of the Act.

7. Discussion

It is evident that the applicant scaled down the kind of information that she was requesting from school districts for the purposes of this inquiry. She originally wanted the number, grade, and sex of students in each school; now she states that she would be satisfied with the name of the school, the number of students receiving Ritalin, and the sex of the student, if possible.

The Disclosure of Records by Other School Districts

The applicant emphasizes that the Victoria School District provided her with the specific information that she is seeking in this inquiry. It did so by collecting the information in non-identifiable fashion from each elementary school and then releasing the reporting record (a single sheet) to the applicant. (Submission of the Applicant, paragraph 3.2; and tab 3)

The affidavit of the applicant provides further details of the kind of information that she received from about half of the twenty school districts in this province that she originally approached for information. Some school districts disclosed relevant information to the applicant. In addition, six other school districts that did not comply with the applicant's initial request provided me with the actual records responsive to the request, so that I am aware of the limited effort required to tabulate such data.

In light of the assertion made by some of the Districts that it would have to undertake some kind of complex “research project” to comply with the applicant’s request, I find it significant that other school districts appear to have readily provided the information sought by the applicant in summary form. I find particularly problematic the Langley District’s assertion that the compilation of records which are responsive to the applicant’s request “would involve the expenditure of significant effort and time by the Board’s staff.”

Having regard to the actual number of records provided to me by most of the Districts in this inquiry and based on my careful review of them, it is my observation that it would likely be a very simple task for each School District to compile the statistical information sought by the applicant; it would perhaps even be a simpler task than severing the original records as required by section 4(2) of the Act.

The Disclosure of “Personal” Information

The applicant argued that the records in dispute are not personal information within the meaning of the Act, because what she is asking for “would not be sufficiently detailed to reveal the identity of any child actually receiving Ritalin, even in a small school.” (Submission of the Applicant, paragraphs 8.6 and, generally, 8.4 to 8.13) It is sufficient for my purposes that the personal information in dispute originates as identifiable information about particular children who are receiving medication, since parents are required to fill in a form for each one of them. Thus I find that the information in the records in dispute is “personal information” as defined in Schedule 1 of the Act. At the same time there is no question in this inquiry of disclosing identifiable personal information on school children.

Section 22: Disclosure harmful to the personal privacy of third parties

Some school districts have gone to considerable lengths to emphasize the sensitive nature of the information about individual students who are receiving Ritalin at elementary schools. I fully agree that such information in identifiable form is sensitive personal information. Vancouver also pointed out, of course, that some students may be receiving Ritalin at home from their parents; I am also fully aware of Vancouver’s point that it is physicians and parents, not schools, who are prescribing Ritalin for children. That does not change the public health and safety issue.

The key point is that the applicant in this case is not asking for the disclosure of identifiable personal information as such, but rather what amounts to a statistical summary. In this regard, a comment by the Surrey School District is misguided:

It is the belief of the Surrey School Board that any disclosure of medical information regarding students in the system would be a violation of the personal privacy of the individuals. This holds regardless of how well the information is ‘disguised’ through summarization. (Submission of Surrey, p. 1)

As discussed below, there are a number of standard procedures available that will help to protect against residual disclosure of identifiable personal information, when severed records or statistics are prepared for disclosure to the applicant.

Section 22(2): In determining under subsection (1) or (3) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether ... (b) the disclosure is likely to promote public health and safety or to promote the protection of the environment,....

The applicant relies in part on section 22(2)(b) of the Act as a factor favouring disclosure. Section 22(2)(b) provides in part that, in determining under subsection (1) or (3) whether the disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, a public body must consider as a relevant circumstance the question of whether "the disclosure is likely to promote public health and safety."

The applicant submits that "disclosure of information relating to the use of Ritalin by children which is administered at school by school employees is necessary to foster debate as to the prevalence, and fluctuating rates, of usage of Ritalin in British Columbia. This debate is likely to promote public health and safety, especially for one of the most vulnerable groups in our society." (Submission of the Applicant, paragraph 8.16) The affidavit of the applicant, which I am not presenting here in detail, sets out various compelling reasons as to why disclosure of the information she is seeking is in the public interest. (Submission of the Applicant, paragraphs 8.20 to 8.28 and affidavit of Ann Rees, *passim*) As noted below, I agree that the public interest favours disclosure in this particular piece of investigative reporting. I strongly disagree with this submission from Burnaby: "To argue that such debate [about the prevalence and fluctuating rates of usage of Ritalin in B.C.] is likely to promote public health and safety in BC is nonsense." (Reply Submission of Burnaby, p. 5)

I find that section 22(2)(b) is a relevant circumstance that the head of a school district must take account of in responding to the applicant's requests.

Section 22(2)(f): the personal information has been supplied in confidence,...

Some of the Districts relied on section 22(2)(f) of the Act ("the personal information has been supplied in confidence"). I agree with those Districts which argued that a factor militating against disclosure of the actual information requested is that it has been supplied to schools by parents and physicians in confidence. That certainly applies to the original identifiable records. However, I also agree with the applicant that "[t]his argument is irrelevant because the individual students could not be identified by the disclosure sought by the Applicant." (Reply Submission of the Applicant to Mission, paragraph 4.2)

Section 22(3)(a): A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if (a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation,....

Section 22(1) of the Act requires a public body to refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy. Section 22(3) lists those types of information the release of which is presumed to be an unreasonable invasion of the third party's personal privacy.

In this case, the Districts relied on section 22(3)(a) to argue that disclosure of the personal information in the records in dispute would constitute an unreasonable invasion of the privacy of students.

I agree with the Districts that section 22(3)(a) of the Act applies to the records in dispute, because they contain personal information relating to "a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation." Accordingly, the disclosure of the original, unsevered records in dispute is presumed to give rise to an unreasonable invasion of a third party's personal privacy.

The reality is that the Districts would simply have to sever these forms in order to disclose the information requested by the applicant. A School District might choose to do some elementary counting and tabulating in order to release summary statistics, as a number of School Districts have already done. There is no question of releasing the records in an identifiable form. In my view, there exist sufficiently compelling factors for disclosure of the requested information such that the presumption against disclosure of the original records is overcome in the particular circumstances of this inquiry.

Section 22(4)(b): A disclosure of personal information is not an unreasonable invasion of a third party's personal privacy if ... (b) there are compelling circumstances affecting anyone's health or safety and notice of disclosure is mailed to the last known address of the third party,....

The applicant attempted to rely on this subsection to require disclosure. (Submission of the Applicant, paragraphs 8.31 to 8.37) I find that this section has only limited relevance to the issues in dispute in this inquiry. This section is most appropriately used for episodes of individual, specific need for disclosure rather than generic arguments such as that fifty percent of the children receiving Ritalin in schools may be doing so unnecessarily with possible serious side effects. (See Order No. 54-1995, September 19, 1995, p. 9) The latter point is more relevant to making a public interest argument for disclosure on the basis of section 25 of the Act.

Section 22: The Problem of Group Privacy

Another factor raised by some of the Districts as being relevant and favouring non-disclosure concerns the risk of re-identification of students taking Ritalin and stigmatization of those students and/or their schools. The first concern is that the publication of statistics about the number, sex, and school of children taking Ritalin could result in the "re-identification" of the student. For example, if in some schools only one child is taking Ritalin, then the Districts say that it would not be unreasonable to expect that the child could be identified from the release of statistical information about that child's school. The second concern is that the release of information about the name of the school can result in stigmatization of a particular school and

children at that school. For example, one District pointed out that the records it provided demonstrate that the largest number of children in an elementary school receiving Ritalin are children attending a District-wide special needs school. It argues that publication of statistics about this school could lead to further stigmatization of children who are already disadvantaged. The head of each School District must keep such considerations in mind as it complies with my Order in this inquiry.

It is customary in statistical work, such as that done by Statistics Canada, to refuse to disclose personal information in cells in a table that contain fewer than five persons, for example. Some Districts raised the issue of not releasing information about one or two students in small schools, or in a specific grade, who might be easily identified by other families in a given school district. I think that this is a practical issue that needs to be addressed. It would also be realistic for a District to choose to obscure identification of specific schools, where rates of Ritalin use are much higher, to avoid stigmatization of a population of students at one school.

I have long been interested in group privacy issues, which arise when the release of personal information, even in anonymized form, nevertheless permits the stigmatization, in some manner, of a group of individuals, such as First Nations Canadians, Chinese Canadians, professors, or, in this inquiry, students at a particular school. One School District indicated that its data could unfairly label and attract undue public attention to a school which could have a higher proportion of students receiving Ritalin and also might be a district-wide school for students with special needs. This raises, in principle, the application of section 22(2)(h) of the Act, although its language refers only to the reputation of a person, not a group of persons.

The applicant emphasizes that she does not want access to all of the personal information in the records in dispute. She only wants the information in those records which would indicate the number, sex, and school of the children taking Ritalin in the Districts. The applicant argues that such information should be disclosed because individual students would not be identified by the form of disclosure sought by the applicant. I agree. Based on this discussion, School Districts should prepare severed records for disclosure with sensitivity to these concerns.

Section 4(2): The Obligation to Sever Records

Each child receiving medication in a school from school personnel is the object of a formal "Request for Administration of Medication," which comprises one page. It is also known as Ministry of Health form "HLTH 41." The District of Langley submitted a blank form to me for purposes of information. The submission of the applicant is that the school districts have an obligation to sever such records to furnish her with the information that she is requesting. (Submission of the Applicant, paragraphs 9.1 to 9.11) I agree with the applicant that severing is certainly a choice facing a school district, but there may be easier ways to comply with the request, whether or not required by the Act.

The applicant is prepared to accept "expurgated copies" of every "Request for Administration of Medicine" relating to Ritalin, if that is the only way she can get the requested information. (Reply Submission of the Applicant, re: Langley, paragraph 3.5) Such a procedure

may be an inefficient method for a School District to adopt, but it is what the applicant is entitled to under the Act.

One of the problematic points made by some School Districts is that severing in this inquiry would not be meaningful, because, at the end of the day, the record does not contain three pieces of information that were requested by the applicant: the name of the school; the grade of the student; and the sex of the student. (Submission of Burnaby, p. 2) Adding the first information would not be a burden (even if not required by the Act), since the forms themselves, which most Districts supplied to me, come from individual elementary schools. The specific grade level of the student is not on the original form. The sex of the student is almost entirely evident from the name of the student.

Section 4(2) of the Act sets a standard of reasonableness for the amount of severing to be required, so the obligation to sever is not absolute. But it is my view that severing can readily be done by the individual School Districts in the circumstances of this inquiry.

Section 6: The Duty to Assist Applicants

The applicant emphasizes that school districts are required under the Act to make “every reasonable effort” to assist applicants. Given the evidence to date that only four to six percent of elementary school children are receiving Ritalin, the applicant suggests that it would not be an onerous duty to supply her with the information requested by making up simple lists and doing some elementary counting. (Submission of the Applicant, paragraphs 10.1 to 10.11) Half of the school districts have already done so. (Submission of the Applicant, paragraph 10.3) I agree with the applicant on this point, again, even if the Act does not require such service (severing the original records is an acceptable alternative).

Langley School District claims that it is being asked to supply statistical information to the applicant, which it does not already maintain in a disclosable form. It would be required, in essence, to collect and tabulate information from existing records in a manner that other school districts in the province have already done. I do not agree that Langley is being asked to conduct what it describes as “a research project” and “gratuitous and unnecessary research.” It needs only to sever existing records of the dispensing of Ritalin.

I further disagree with Langley and other School Districts’ assessment of this request as “research” in the circumstances of this inquiry, especially since there is a public interest in the disclosure of what has been requested. See Ann Rees’ series in The Province, February 24, February 26, 1998, pp. A1, ff, “Drugging our Children;” and A Report on the Health of British Columbians. Provincial Health. Provincial Health Officer’s Annual Report 1997. Feature Report: The Health and Well-being of British Columbia’s Children (Ministry of Health, Victoria, 1998), pp. 94-95, “Ritalin Prescribing.” The “research” required in this inquiry consists only of collecting and tabulating information from records that exist in the schools.

It is sometimes problematic in inquiries of this type to predict, in advance, what records to be disclosed might really be in the public interest. The fact that this applicant has already received comparable records and has published an informative series of articles in a leading

provincial newspaper indicates, at least to my satisfaction, that there is a significant public interest in the dispensing of certain types of medication to elementary school students during school hours. As noted, the latest report of the Provincial Health Officer supports this conclusion as well. My review of the additional documents submitted by the applicant, as part of her initial submission to this inquiry, lead me to a similar conclusion. It seems clear to me that school administrators, teachers, parents, and students in elementary schools, as well as health care providers, should be interested in the use of medication by some students.

Burnaby raises the issue of why it did not simply add up all the documents related to the administration of Ritalin and provide the number by school and by grade: “The reason is that creation of the record is not required and there is a high likelihood of student identification; e.g. one male student at X School.” (Submission of Burnaby, p. 3) To start with, the latter point by Burnaby is not very persuasive, unless it can demonstrate that it is in fact common for only one student per school to receive Ritalin during school time. Under such circumstances, as noted above, it is possible for a School District to suppress small cell sizes in accordance with standard practice among statisticians and others reviewing sensitive personal information for disclosure. The more interesting point is that “creation of the record is not required....” That kind of statement is not, in my view, in accordance with the responsibility to assist applicants under section 6 of the Act, when a public body can do so fairly easily on the basis of collecting existing records. Those implementing the Act at public bodies routinely collect responsive records from across the province, not just one School District. Collecting records for severing is different from creating them.

The following statement by Burnaby also makes the helpful point that it was relatively easy to collect most of the information that the applicant requested:

Our argument is not that collecting the information is an onerous task. Our argument is that we are being asked to create or generate a record which is not maintained by this public body. This goes way beyond the duty to assist. (Reply Submission of Burnaby, p. 8)

My response is that collecting existing information in this inquiry is not an onerous task and should occur on the basis of the duty to assist and, especially, the duty to sever existing records, especially when a demonstrable public interest exists.

9. Order

I find that School District No. 35 (Langley), School District No. 75 (Mission), School District No. 43 (Coquitlam), School District No. 38 (Richmond), School District No. 41 (Burnaby), School District No. 36 (Surrey), and School District No. 39 (Vancouver) were not required to refuse access to all of the records under section 22(3)(a) of the Act. Under section 58(2)(a) of the Act, I require the School Districts to sever the records and disclose them in anonymized form to the applicant.

Under section 58(4) of the Act, I require the School Districts to sever the records in accordance with the guidelines for anonymization of personal information that I have discussed above in this Order (see "The Problem of Group Privacy" at pp. 10-11).

I also find that School District No. 35 (Langley), School District No. 75 (Mission), School District No. 43 (Coquitlam), School District No. 38 (Richmond), School District No. 41 (Burnaby), School District No. 36 (Surrey), and School District No. 39 (Vancouver) were not required under section 6(2) of the Act to create a record responsive to the applicant's request.

David H. Flaherty
Commissioner

September 9, 1998