

31 March 2016

Hon Amy Adams  
Minister of Justice  
Parliament Buildings  
**WELLINGTON**

Dear Minister

## **FOUR MONTHLY REPORT OF THE PRIVACY COMMISSIONER FOR THE PERIOD 1 NOVEMBER 2015 TO 28 FEBRUARY 2016**

### **Highlights**

During the reporting period we:

- Had an initial meeting of our International Intelligence Oversight Network. This is a joint initiative between my office and the Inspector-General of Intelligence and Security. The meeting occurred in Amsterdam, and was attended by representatives of intelligence oversight agencies from each of the Five Eyes jurisdictions;
- Successfully completed a transparency reporting pilot, a world first for a privacy authority, featuring 10 companies reporting to us on the requests and demands for customer data made by government agencies. The report of the pilot received considerable media publicity;
- Continued our programme of regional visits with sessions in Tauranga and Rotorua;
- Continued to promote and develop our online learning modules, launching a new module on Privacy Impact Assessment.

### **Complaints and investigations**

In the year to date, we received 5,079 enquiries from the public, broadly in line with projected workloads. Use of our online complaints form has increased steadily. As at the end of this reporting period, 36% of complaints received were posted online. We received 99 data breach notifications in the eight months to February, 38 of which were received in the last quarter.

In the year to date, we received 664 complaints. This figure is higher than we would expect at this point in the year and reflects an upwards trend in the number of complaints received by the Office. Despite this, the quality of our complaints investigations has remained high, with 90% of complaint files externally reviewed receiving 3.5 out of 5 or better. We have continued in our efforts to progress complaints efficiently and with a focus on resolution. As at the end of February, our settlement rate sat at 50% (which equated to a total of 313 complaints settled), well above our KPI of 35%.

## Policy

We provided advice to a range of government and private sector agencies on a diverse range of policy initiatives and privacy related issues over the reporting period. Examples include:

- providing advice to the Gangs Intelligence Centre on the development of an Approved Information Sharing Agreement;
- providing training to regional Children's Teams to support the implementation of the Children's Action Plan;
- assisting the Electricity Authority to resolve a privacy related question from electricity retailers;
- working with the New Zealand Transport Authority on the process for approving special access to the Motor Vehicle Register; and
- a submission to the Ministry of Transport on the Small Passenger Services review.

Our KPIs are on-track for the financial year.

A number of projects have also been completed or progressed during the reporting period. For example, we published a discussion document on issues facing local government when seeking make property information available online and a report from the first phase of our transparency reporting trial. We will shortly complete a review of Police Vetting, jointly with the Independent Police Conduct Authority.

We made submissions to Select Committees on the following Bills or other matters:

- Financial Assistance for Live Organ Donors Bill;
- Child Protection (Child Sex Offender Register) Bill;
- Taxation (Transformation: First Phase Simplification and other Measures) Bill;
- Taxation (Residential Land Withholding Tax, GST on Online Services, and Student Loans) Bill;
- Education Legislation (Establishing and managing verified student identities to support students' access to online services) Bill;
- Social Security (Extension of Young Persons Services and Remedial Matters) Amendment Bill; and
- Births, Deaths, Marriages, and Relationships Registration (Preventing Name Change by Child Sex Offenders) Amendment Bill.

## Legal

Law reform work has been a major focus. In particular we have been working closely with the Ministry of Justice and Parliamentary Counsel Office in supporting their work on the Privacy Bill. This has included providing input on the supplementary decisions Cabinet Paper and working with the Ministry of Justice to develop the policy for a proposed new privacy principle that controls the use of data that has been de-identified to protect against re-identification of the persons to which it relates. In addition we have provided ongoing advice on your initiative to improve information sharing among public protection agencies.

Our work in respect of intelligence and security agencies has involved providing advice on policy documents and responses for a number of complainants involving those agencies.

We have received an ever increasing number of consultations requests from the Office of the Ombudsman, particularly in the first part of this year.

In December 2015 in *DHRP v NZICA* [2015] NZHRRT 54, the Human Rights Review Tribunal dismissed the proceedings brought by the Director of Human Rights Proceedings against a decision of the New Zealand Institute of Chartered Accountants to refuse to provide information that they considered was “evaluative material” for the purposes of s29 of the Privacy Act. The Tribunal favoured a broad interpretation of the term. We paid the respondents \$12,000 in costs.

## Education and communications

There has been strong pick-up for our online training modules – particularly the Privacy 101 and Health 101 courses - since they were introduced in mid 2015. We are marketing these courses with wide-ranging stakeholders and have a plan for development of further modules.

Our blog continues to be a popular means of communication of the work of the Office. Our aim is to produce timely content that leverages topical issues in privacy. Media enquiries to the office have remained steady.

We have begun development of a new online access tool, “About Me”, to facilitate requests for personal information to agencies. This is planned for release during Privacy Week.

## International

The Privacy Commissioner was re-elected in October for a second term as Chair of the Executive Committee to the International Conference of Data Protection and Privacy Commissioners (ICDPPC). The Office continues to provide the ICDPPC Secretariat. In this capacity the Office was involved in upgrading conference online resources and communications tools and preparing for the annual meeting in Marrakesh later in 2016. I chaired an Executive Committee meeting in December.

In December I participated in the 44<sup>th</sup> meeting of the Asia Pacific Privacy Authorities (APPA) Forum in Macau, China. While there I also gave a presentation at a big data conference.

In February Assistant Commissioner Blair Stewart was a delegate to the APEC Electronic Commerce Steering Group (ECSG) Data Privacy Subgroup (DPS) meetings in Lima, Peru. In addition to active participation in the regular parts of the meetings, Assistant Commissioner Stewart gave presentations on cross-border breach notification, data portability and information flows and emergency preparedness.

During February, we prepared answers to the European Commission about aspects of amendments to the Privacy Act as part of ongoing monitoring of the adequacy of NZ law for the purposes of the EU Data Protection Directive.

### **Corporate Services**

The year to date financials, provide a deficit of \$106,000. The deficit arises from a number of initiatives which due to timing of the law reform process were deferred from last year. It should be noted that the higher than budgeted surplus from last year is being used here to meet the operating deficit and there is no financial risk in the balance sheet to the Office. The matter has been well anticipated in previous reports and in discussions with the auditors, and will be an ongoing issue as we progress through our work programme over this and the following financial year. I do expect the year end outlook to be less than shown in the accounts as it is based on a worst case scenario.

During the year to date we experienced levels of staff turnover which required we contract additional resources to maintain our service performance levels. The additional resources coupled with the cost of recruitment contributed to the increased staff costs.

A planned refurbishment of the Auckland office which we have occupied for 8 years was cancelled as the cost of \$220,000 was not supportable, with less than 4 years remaining on the current lease.

Yours sincerely



John Edwards  
**Privacy Commissioner**

Encl:   Appendix A:   Financials for period ending 29 February 2016  
          Appendix B:   Performance against Statements of Service Performance - Year to Date  
          Appendix C:   Trend Analysis

## APPENDIX A : Financials for period ending 29 February 2016

### Statement of Comprehensive Income For the 8 Months to 29 February 2016

Prev. Year YTD Actual \$000		Feb 2016 YTD Actual \$000	Feb 2016 YTD Budget \$000	YTD Var \$000	YTD Var %	Year-End Outlook \$000	Year-End SPE Forecast \$000
	<b>Revenue</b>						
3,447	Revenue from Crown	3,314	3,313	1	0	4,970	4,970
190	Other Income	217	235	(18)	(7.6)	235	261
40	Interest	27	37	(10)	(27)	45	55
<b>3,667</b>	<b>Total revenue</b>	<b>3,558</b>	<b>3,585</b>	<b>(27)</b>	<b>(0.7)</b>	<b>5,250</b>	<b>5,286</b>
	<b>Expenditure</b>						
92	Marketing	31	67	(36)	(53.7)	77	120
18	Audit Fees	0	29	(29)	(100)	29	29
88	Depreciation	119	128	(9)	(7)	183	192
251	Rental	266	290	(24)	(8.3)	407	438
622	Operating	752	624	128	20.5	1,064	919
2,034	Staff Costs	2,496	2,362	134	5.6	3,699	3,552
<b>3,105</b>	<b>Total expenditure</b>	<b>3,664</b>	<b>3,500</b>	<b>164</b>	<b>4.7</b>	<b>5,459</b>	<b>5,250</b>
<b>572</b>	<b>Net surplus / (deficit)</b>	<b>(106)</b>	<b>85</b>	<b>(191)</b>	<b>(224.7)</b>	<b>(209)</b>	<b>36</b>

### Statement of Financial Position As at 29 February 2016

	Feb 2016 Actual \$000	Feb 2016 Budget \$000	YTD Var \$000	Year-End Outlook \$000	Year-End SPE Forecast \$000
<b>ASSETS</b>					
<b>Current Assets</b>					
Cash & Cash Equivalent	1,107	846	261	1,081	840
Debtors and Other Receivables	81	33	48	49	42
Inventory	23	11	12	23	11
Prepayments	6	12	(6)	6	12
<b>Total Current Assets</b>	<b>1,217</b>	<b>902</b>	<b>315</b>	<b>1,159</b>	<b>905</b>
<b>Current Liabilities</b>					
Creditors and other payables	114	120	(6)	164	169
Employee Entitlements	207	162	45	225	180
<b>Total Current Liabilities</b>	<b>321</b>	<b>282</b>	<b>39</b>	<b>389</b>	<b>349</b>
<b>Working Capital</b>	<b>896</b>	<b>620</b>	<b>276</b>	<b>770</b>	<b>556</b>
<b>Non-Current Assets</b>					
Property, Plant and Equipment	454	705		479	720
Intangible Assets	19			10	
<b>Total Non-Current Assets</b>	<b>473</b>	<b>705</b>	<b>(232)</b>	<b>489</b>	<b>720</b>
<b>Non-current Liabilities</b>	<b>78</b>	<b>-</b>	<b>78</b>	<b>71</b>	<b>-</b>
<b>Net Assets</b>	<b>1,291</b>	<b>1,325</b>	<b>(34)</b>	<b>1,188</b>	<b>1,276</b>
<b>Public Equity</b>					
Opening Balance	1,397	1,240	157	1,397	1,240
Accumulated Surplus	(106)	85	(191)	(209)	36
<b>Total Public Equity</b>	<b>1,291</b>	<b>1,325</b>	<b>(34)</b>	<b>1,188</b>	<b>1,276</b>

**Statement of Cash Flows  
As at 29 February 2016**

	Feb 2016	Feb 2016	Year-End	Year-End
	Actual	Budget	Outlook	SPE
	\$000	\$000	\$000	Forecast
				\$000
<b>Cash Flows from Operating Activities</b>				
<i>Cash was Provided from:</i>				
Government Grant	3,314	3,313	4,970	4,970
Other Income	152	252	229	278
Interest	27	37	45	55
	<b>3,493</b>	<b>3,602</b>	<b>5,244</b>	<b>5,303</b>
<i>Cash was Applied to:</i>				
Payments to Suppliers	1,152	1,035	1,645	1,492
Payments to Employees	2,427	2,372	3,621	3,534
Payments of GST	(38)	97	(29)	105
	<b>3,541</b>	<b>3,504</b>	<b>5,237</b>	<b>5,131</b>
<b>Net Cash Flow applied to Operating Activities</b>	<b>(48)</b>	<b>98</b>	<b>7</b>	<b>172</b>
<b>Cash Flows from Investment Activities</b>				
Cash was applied to				
Purchase of Fixed Assets <sup>2</sup>	(103)	160	(22)	240
<b>Net Cash flows applied to Investing Activities</b>	<b>(103)</b>	<b>160</b>	<b>(22)</b>	<b>240</b>
Cash was Provided from:				
Sale of Fixed Assets	-	-	-	-
<b>Net Cash Flow from Investment Activities</b>	<b>103</b>	<b>(160)</b>	<b>22</b>	<b>240</b>
<b>Net Increase/(Decrease) in Cash Held</b>	<b>55</b>	<b>(62)</b>	<b>29</b>	<b>(68)</b>
<b>Cash brought forward</b>	<b>1,052</b>	<b>908</b>	<b>1,052</b>	<b>908</b>
<b>Closing cash carried forward</b>	<b>1,107</b>	<b>846</b>	<b>1,081</b>	<b>840</b>
<b>Cash made up of:</b>				
Cash on hand	-	-	-	-
National Bank - Cheque	606	46	281	40
National Bank - Deposit	500	800	800	800
	<b>1,107</b>	<b>846</b>	<b>1,081</b>	<b>840</b>

Notes:

- 1 A re-allocation has been made to the prior year comparatives for both staff costs and operating costs to ensure they are comparable with the current year actuals and budget. The difference is due to a change in the way contract services, recruitment and staff development are allocated. These are now included within the budget for operating costs and not staff costs. The total expenditure reported at February 2015 has remained unchanged.
- 2 Lease incentive received from the Wellington office landlord which has been applied as a negative fixed asset purchase. This was included in the October 4 monthly accounts and carries through to these accounts.

## APPENDIX B: Performance against Statements of Service Performance - Year to Date

### Output 1 - Guidance, education and awareness

Measure	Achieved As at 29 Feb	Expectation As at 29 Feb
<b>Guidance, education and awareness: Quantity</b>		
Number of people completing education modules on the new on-line system	Achieved 1,758 people have completed the Health 101, Privacy 101 and PIA on-line modules to date. (Completion has been assessed as those who have completed the post course quiz.)  A total of 6,732 people have accessed these 3 modules.	1,667
Presentations at conferences / seminars	66	30
Public enquiries received and answered	5,079	4,667
Media enquiries received and answered	141	167
<b>Guidance, education and awareness: Quality</b>		
Evaluations following on-line training indicate increased understanding by the participant in 80% of evaluations	Currently 45% have increased their understanding.  A further 25% scored 100% in the tests both before and after completion of the course.	80%
Website contains up-to-date copies of all privacy codes and commentary, all formal statutory reports of the Privacy Commissioner, all current published guidance from the Privacy Commissioner, and additional resources to support compliance with the Act	Achieved	Achieved
The office engages with a wide range of stakeholders both nationally and internationally	Achieved	Achieved
The "ease of use" of the website is assessed and improvements considered as a result of comments received	Assessment still to be undertaken.	Achieved
<b>Guidance, education and awareness: Timeliness</b>		
Respond to all enquiries within 1 working day	96.4%	100%
Guidance materials are produced within agreed timelines as set out in the work plan	Achieved	Achieved

Output 2 - Policy and Research

Measure	Achieved As at 29 Feb	Expectation As at 29 Feb
<b>Policy and Research: Quantity</b>		
New policy files opened during the year	127	53
Identifiable progress in international efforts in which we are actively engaged to work towards a more sustainable platform for cross border co-operation	Achieved. In October the Office, as Secretariat to the ICDPPC, launched the Global Cross Border Cooperation Arrangement.	Achieved
Cross-border enforcement laws and practices in place	Work progressed on law reform in this area.	Achieved
<b>Policy and Research: Quality</b>		
Survey of recipients of policy advice indicate that at least 80% are satisfied with the service they received from the Privacy Commissioner	Measured at year end	
Our participation in the law reform process is valued by the Ministry of Justice	Measured at year end	
An external review of a sample of advice provided on policy files rates 85% as 3.5 out of 5 or better on the quality of analysis, focus on important issues, clear communications and good working relationships	Measured at year end	
<b>Policy and Research: Timeliness</b>		
Advice on proposals provided within agreed timeframes	Measured at year end	
Requests for input into the law reform is made available within agreed timeframes	Measured at year end	
% of reports provided in a timely manner to the Select Committee as per Act/Cabinet Manual	100%	100%

Output 3 – Information sharing/matching

Measure	Achieved As at 29 Feb	Expectation As at 29 Feb
<b>Information sharing/matching: Quantity</b>		
Information matching programmes monitored	55	55
New information sharing or matching programmes assessed	0	3
<b>Better Public Services: Quality</b>		
All statutory obligations (including timelines) to report on information matching met	Achieved to date	100%
All information matching programmes that are assessed to be non-compliant are discussed with the relevant agencies and recommendations made where necessary	100%	100%

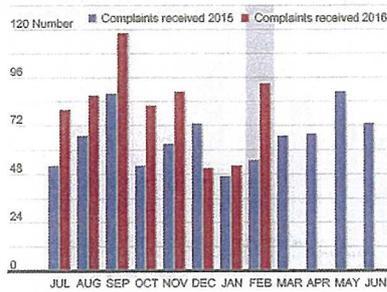
Measure	Achieved As at 29 Feb	Expectation As at 29 Feb
Recipients' satisfaction with the service they received from the Office is rated as "satisfactory" or better in 80% of responses to a survey of recipients receiving information matching/sharing advice in the period	Measured at year end	
Provide advice and training to key stakeholders regarding information sharing to provide an understanding across the public sector of how information can be shared to achieve results and minimise risks, including the use of technology	Measured at year end	
<b>Better Public Services: Timeliness</b>		
Requests for advice on information sharing agreements are made available within agreed timelines	Measured at year end	

#### Output 4 - Compliance

Measure	Achieved As at 29 Feb	Expectation As at 29 Feb
<b>Compliance: Quantity</b>		
Number of complaints received	664	533
Increasing use of the on-line system for registering of complaints (to be measured as a % of total complaints received)	36%	10%
<b>Compliance: Quality</b>		
Complainants' and respondents' satisfaction with the complaints handling process rated as "satisfactory" or better in 80% of responses to a survey of complaints received and closed in the preceding period	To be measured at year end  The Office is currently undertaking a project to improve survey processes	80%
Of the complaints processed, an increasing % are closed by settlement between the parties	50%	35%
Amendments to codes of practice meet all statutory requirements	100%	100%
An external review of a sample of complaints investigations rates 85% as 3.5 out of 5 or better on the legal analysis, correctness of the legal conclusions, soundness of the investigative procedure and timeliness of response	90% (Based on the results of 2 separate reviews covering complaints worked on between July and December 2015)	85%
<b>Compliance: Timeliness</b>		
% of files greater than 6 months old at the year end	Measured at year end	
Review of the operation of Credit Reporting Code substantially progressed	In progress. The public phase is due to commence before the year end	Not Achieved

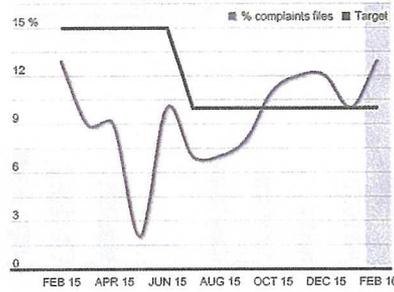


**Complaints received**



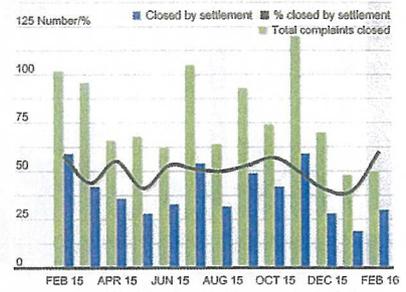
To provide a comparison with the level of complaints received year on year.

**% complaints greater than 6 mths old**



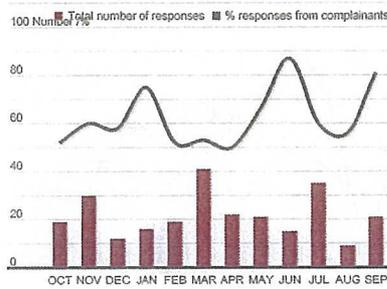
To show the % of complaints work in progress greater than 6 months old against target and the previous year.

**Closure through settlement**



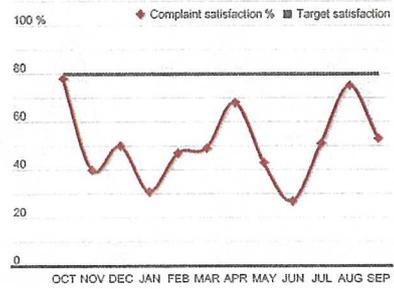
To show the number and % of files closed through settlement between the parties.

**Responses to complaints survey**



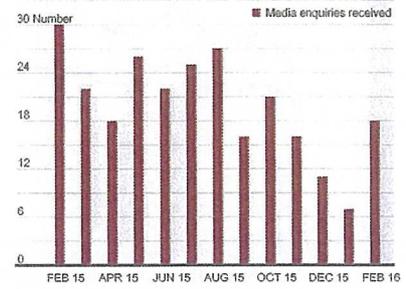
To provide an indication of the number of responses to the survey and the % of complainants completing compared to respondents

**Complaints satisfaction rating**



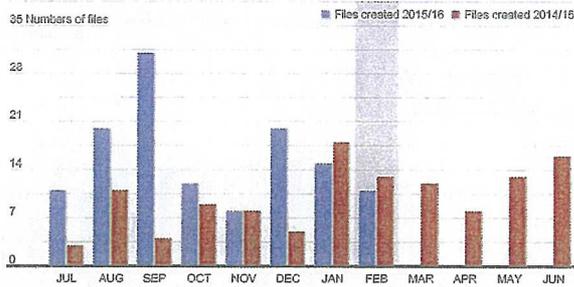
To show the % of responses to the complaints survey indicating an overall satisfaction with the service they received from the office compared to the target.

**Media Enquiries received**



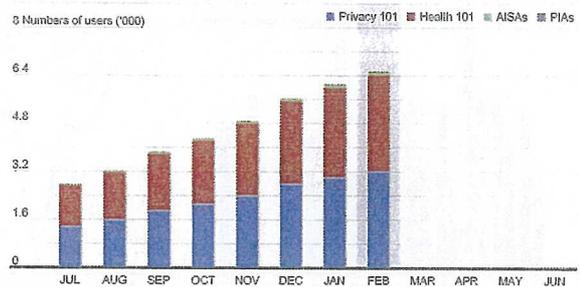
To show the number of media enquiries by month.

Policy files opened



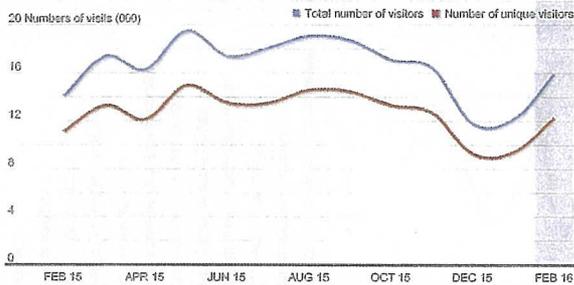
To identify the number of files opened in the month compared to the prior year

Number of users of the on-line modules



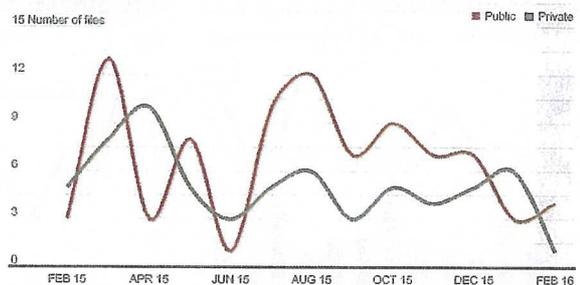
To identify the numbers of users to date for each of the on-line modules. Note that these are cumulative figures to date and not the numbers per month

Visits to the website



To show the number of visitors to the website on a monthly basis over the past 12 months.

Breach notifications



This shows the trend in breach notifications relating to public and private entities