

30 March 2017

Hon Mark Mitchell  
Associate Minister of Justice  
Parliament Buildings  
WELLINGTON

Dear Minister

## **FOUR MONTHLY REPORT OF THE PRIVACY COMMISSIONER FOR THE PERIOD 1 NOVEMBER 2016 TO 28 FEBRUARY 2017**

### **Highlights**

- Wellington office staff were re-established in our building after a disrupted several months following the November earthquake.
- We implemented our naming policy on several occasions as a means to highlight poor practices of respondent agencies.
- We formally launched our Trusted Sharing Consultancy Service.
- We provided s26 report recommending six additional matters for Privacy Act reform.
- We issued our first advisory opinion in January: AO 1/2016 [2017] NZPrivCmr 1: *Whether addresses of fire incidents are personal information.*

### **Dispute resolution**

In the year to 28 February 2017, we received 490 complaints. We continued in our efforts to progress complaints efficiently and with a focus on early resolution, with a settlement rate 46% which is better than our KPI of 40%. By the end of this reporting period, 45% of complaints received were submitted online.

We received 70 data breach notifications during the quarter and are tracking ahead of the projected 67 for the full year.

### **Supporting information sharing**

We continued our focus on providing advice to government agencies on information sharing. As part of this effort, I formally launched the Trusted Sharing Consultancy Service on 20 December 2016. In other measures, we worked with the Ministry of Justice, the State Services Commission and the Government Chief Privacy Officer (GCPO) to progress the Cabinet Directive - an initiative of the Ministers of Justice and State Services to identify potential legal obstacles to government information sharing.

We provided advice to departments on a number of Approved Information Sharing Agreements (AISAs), and provided reports to Ministers as required under section 96O of the Privacy Act on AISAs, to facilitate the transfer of information from the Ministry of Justice to Statistics New Zealand, and between Inland Revenue and the Ministry of Social Development. We commented on the early draft of MBIE's migrant exploitation agreement and further commented on the Gang Intelligence Centre agreement.

In November 2016, I proposed an amendment to the Telecommunications Information Privacy Code 2003 to enable the launch of a new system to gather and share automated mobile emergency caller location information. The system, which dispensed with individual authorisation, was designed to assist the emergency services to respond more quickly to an emergency. The amendment was issued, following a public submission process, in January and came into effect in March.

### **Submissions**

We submitted to Select Committees on the following Bills:

- the Outer Space and High-Altitude Activities Bill;
- the Electronic Interactions Reform Bill;
- the Customs and Excise Bill;
- the Maritime Transport Amendment Bill; and
- the Enhancing Identity Verification and Border Processes Legislation Bill.

We gave advice and comment on other legislative reforms, including post Select Committee amendments to the Intelligence and Security Bill.

We provided comment to the Law Commission as part of its review of the Search and Surveillance Act.

### **Privacy law reform**

Law reform work in this period focused on additional reforms proposed for the Bill. In December we provided a our report under s26 of the Act that recommended six additional reforms to be included in the Bill: a right to portability; controls on re-identification; a new power to require demonstrations of agency compliance; a new civil penalty; amending the criminal offences; and proceeding with public register reform. We provided subsequent advice and comment on these matters to officials as requested. We also updated officials on the APEC cross border privacy rules developments.

We have provided ongoing advice and comment on the proposed information sharing reforms to Part 9A and Part 11, Schedule 5, as well as amendments to Part 10. This includes reporting to you in February setting out our concerns with these proposals.

### **Making privacy easy**

The uptake of the new AskUs FAQ tool has been strong. In the seven months since it was launched in August 2016, there have been over 4,000 enquiries made. AskUs provides users with an interactive online tool to find out the answer to any privacy question they might

have. The tool generates a range of possible options and users select the one that provides the best answer. We are actively managing this resource and developing new content on a weekly basis. We are monitoring the potential impact it may have on public enquiries received through telephone and email.

We issued our first advisory opinion in January (AO 1/2016 [2017] NZPrivCmr 1: Whether addresses of fire incidents are personal information). The opinion responds to a proposal to publish the addresses of fire incidents on the New Zealand Fire Service (NZFS) website to reduce administrative burden from insurers. The opinion concludes addresses of fire incidents will often constitute personal information, and suggests an alternative way of sharing this information with insurers.

## **Outreach**

In the year to date, we received 4,660 enquiries from the public, broadly in line with projected workloads.

We have continued to extend our regional outreach with visits to Taranaki and Blenheim during the period; and a full programme of public speaking engagements, and an average of 6-12 blog posts per month on topical issues.

We hosted the first Privacy Research Week in mid December 2016 in Auckland. This event was an opportunity to highlight the results of the research funded through inaugural grant of the Privacy Good Research Fund.

## **International activity**

In late October 2016, I chaired the 38<sup>th</sup> International Conference of Data Protection and Privacy Commissioners in Marrakech. This completes 2 years of a 3 year term as ICDPPC Chair and my office will provide the ICDPPC Secretariat for a further year. The Conference adopted two NZ-proposed resolutions on developing new metrics for data protection regulation / human rights defenders. To give effect to the metrics resolution we have worked on drafting the first international census of privacy authorities as part of wider efforts to fill gaps in the available evidence-base for privacy policy making. This work was done in cooperation with OECD. We are also leading an ICDPPC metrics working group.

We were represented in December at the 46th APPA Forum in Mexico, by Assistant Commissioner Joy Liddicoat and a staff member.

## **Financial report**

The Office is currently reporting a surplus of \$213k for the 8 months to February 2017. This is \$183k ahead of budget. The figures do not take into account the salary for the last seven days of February which were only paid on 2 March. Taking this into account the surplus for the 8 months is approximately \$96k.

The following expenditure items which are tracking below budget have contributed to the higher than expected surplus:

- Personnel costs are below budget by \$98k. This is mainly due to the final seven days of February not being included as they were paid in early March. This accounts for approximately \$96k. Taking this into account, salaries are on budget;
- Staff development costs are below budget by \$25k. This is due to a timing issue;
- Depreciation costs are lower by \$26k. This is a result of a number of assets that have become fully depreciated during the year;
- Litigation costs are lower by \$26k. This is due to a timing issue, in addition to this being a difficult cost area to budget for; and
- Domestic travel costs are lower by \$17k. This reflects a concerted effort across the office to bring this cost down.

The above are all areas consistent with previous reporting. Looking ahead to the year end, the current prediction is for a surplus of \$76k which will assist to meet the projected deficit for the 2017/18 year.

The past quarter included the relocation of our operations post the Kaikoura earthquake in November until February 2017. The associated business interruption affected our KPI's and financials. Those impacts appear to be returning to normal and we are on track to meet KPIs for the end of the financial year.

Yours sincerely



John Edwards  
**Privacy Commissioner**

Encl: Appendix A: Financials for period ending 28 February 2017  
Appendix B: Performance against Statements of Service Performance - Year to Date  
Appendix C: Trend Analysis

## Appendix A : Financials for period ending 28 February 2017

### Statement of Comprehensive Income For the 8 Months to 28 February 2017

Prev. Year YTD Actual \$000		Feb 2017 YTD Actual \$000	Feb 2017 YTD Budget \$000	YTD Var \$000	YTD Var %	Year-End Outlook \$000	Year-End SPE Forecast \$000
	<b>Revenue</b>						
3,314	Revenue from Crown	3,314	3,314	0	0	4,970	4,970
217	Other Income	163	168	(5)	(3)	167	173
27	Interest	21	32	(11)	(34)	37	48
<b>3,558</b>	<b>Total revenue</b>	<b>3,498</b>	<b>3,514</b>	<b>(16)</b>	<b>(0.5)</b>	<b>5,174</b>	<b>5,191</b>
	<b>Expenditure</b>						
31	Marketing	26	38	(12)	(31)	55	68
0	Audit Fees	0	0	0	0	29	29
119	Depreciation	122	148	(26)	(17)	184	222
266	Rental	271	273	(2)	(1)	408	410
752	Operating	473	545	(72)	(13)	722	794
2,496	Staff Costs	2,453	2,480	(27)	(1)	3,700	3,726
<b>3,664</b>	<b>Total expenditure</b>	<b>3,345</b>	<b>3,484</b>	<b>(139)</b>	<b>(4)</b>	<b>5,098</b>	<b>5,249</b>
<b>(106)</b>	<b>Net surplus / (deficit)</b>	<b>153</b>	<b>30</b>	<b>123</b>	<b>410</b>	<b>76</b>	<b>(58)</b>

### Statement of Financial Position As at 28 February 2017

	Feb 2017 Actual \$000	Feb 2017 Budget \$000	YTD Var \$000	Year-End Outlook \$000	Year-End SPE Forecast \$000
<b>ASSETS</b>					
<b>Current Assets</b>					
Cash & Cash Equivalent	1,018	1,153	(135)	1,011	1,080
Debtors and Other Receivables	82	31	51	44	44
Inventory	22	23	(1)	23	23
Prepayments	28	12	16	28	12
<b>Total Current Assets</b>	<b>1,150</b>	<b>1,219</b>	<b>(69)</b>	<b>1,106</b>	<b>1,159</b>
<b>Current Liabilities</b>					
Creditors and other payables	119	163	(44)	120	163
Employee Entitlements	261	225	36	264	225
<b>Total Current Liabilities</b>	<b>380</b>	<b>388</b>	<b>(8)</b>	<b>384</b>	<b>388</b>
<b>Working Capital</b>	<b>770</b>	<b>831</b>	<b>(61)</b>	<b>722</b>	<b>771</b>
<b>Non-Current Assets</b>					
Property, Plant and Equipment	351			315	412
Intangible Assets	133			134	
<b>Total Non-Current Assets</b>	<b>484</b>	<b>446</b>	<b>38</b>	<b>449</b>	<b>412</b>
<b>Non-current Liabilities</b>	<b>58</b>	<b>59</b>	<b>(1)</b>	<b>52</b>	<b>53</b>
<b>Net Assets</b>	<b>1,196</b>	<b>1,218</b>	<b>(22)</b>	<b>1,119</b>	<b>1,130</b>
<b>Public Equity</b>					
Opening Balance	1,043	1,188	(145)	1,043	1,188
Accumulated Surplus	153	30	123	76	(58)
<b>Total Public Equity</b>	<b>1,196</b>	<b>1,218</b>	<b>(22)</b>	<b>1,119</b>	<b>1,130</b>

**Statement of Cash Flows  
As at 28 February 2017**

	Oct 2017	Oct 2017	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	3,314	4,970	4,970
Other Income	97	169	169	173
Interest	21	32	36	48
	<b>3,432</b>	<b>3,515</b>	<b>5,175</b>	<b>5,191</b>
<i>Cash was Applied to:</i>				
Payments to Suppliers	897	875	1,347	1,325
Payments to Employees	2,406	2,480	3,652	3,726
Payments of GST	(26)	(17)	(13)	(4)
	<b>3,277</b>	<b>3,338</b>	<b>4,986</b>	<b>5,047</b>
<b>Net Cash Flow applied to Operating Activities</b>	<b>155</b>	<b>177</b>	<b>189</b>	<b>144</b>
<b>Cash Flows from Investment Activities</b>				
Cash was applied to Purchase of Fixed Assets	22	105	63	145
<i>Net Cash flows applied to Investing Activities</i>	<b>(22)</b>	<b>(105)</b>	<b>(63)</b>	<b>(145)</b>
Cash was Provided from: Sale of Fixed Assets	-	-	-	-
<b>Net Cash Flow from Investment Activities</b>	<b>(22)</b>	<b>(105)</b>	<b>(63)</b>	<b>(145)</b>
<b>Net Increase/(Decrease) in Cash Held</b>	<b>133</b>	<b>72</b>	<b>126</b>	<b>(1)</b>
<b>Cash brought forward</b>	<b>885</b>	<b>1,081</b>	<b>885</b>	<b>1,081</b>
<b>Closing cash carried forward</b>	<b>1,018</b>	<b>1,153</b>	<b>1,011</b>	<b>1,080</b>
<b>Cash made up of:</b>				
Cash on hand	-	-	-	-
National Bank - Cheque	418	353	411	80
National Bank - Deposit	600	800	600	1,000
	<b>1,018</b>	<b>1,153</b>	<b>1,011</b>	<b>1,080</b>

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

### *Output 1 - Guidance, education and awareness*

<b>Measure</b>	<b>Achieved As at 28 Feb</b>	<b>Expectation As at 28 Feb (as per SPE)</b>
<b>Guidance, education and awareness: Quantity</b>		
Number of people completing education modules on the new on-line system	1,753 This represents the number of people completing the post course tests for Health 101, Privacy 101, PIA and CRPC modules.  In addition, 41 people have accessed the AISA module.	1,667
Presentations at conferences / seminars	68	60
Public enquiries received and answered	4,660	5,000
Media enquiries received and answered	123	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 in the Health 101, Privacy 101, PIA and CRPC modules. A further 23% scored 100% in the tests both.	80%
Website contains up-to-date copies of all current 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 through our policy, dispute resolution and public affairs work.	Achieved	Achieved
The percentage of respondents to the annual stakeholder survey who indicate, where applicable, that the guidance materials reviewed on the website were useful and met their needs.	Measured at year end.	85%
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.	Achieved	Achieved
<b>Guidance, education and awareness: Timeliness</b>		
Respond to all enquiries within 1 working day.	92%	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 28 Feb	Expectation As at 28 Feb (as per SPE)
<b>Policy and Research: Quantity</b>		
The number of the following pieces of work completed during the year:		
- Proposals involving the use of personal information or other privacy issues, received for consultation or advice from the public and private sectors;	97	67
- Submissions and other formal reports, including submissions to select committees; and	16	10
- Office projects, including research projects.	9	7
Identifiable progress in international efforts in which we are actively engaged to work towards more sustainable platforms for cross border co-operation.	Achieved Updates to APEC privacy framework adopted November and work initiated through APPA/ICDPPC on international privacy metrics.	Achieved
<b>Policy and Research: Quality</b>		
The percentage of recipients of policy advice who are satisfied with the service they received from the Privacy Commissioner.	Measured at year end.	85%
Our participation in the law reform process is valued by the Ministry of Justice.	Measured at year end.	Achieved
The percentage of externally reviewed policy files that are rated 3.5 out of 5 or better for quality.	Measured at year end.	85%
<b>Policy and Research: Timeliness</b>		
The percentage of policy files where advice was delivered within agreed timeframes	98%	100%
Requests for input into the law reform are made available within agreed timeframes.	Measured at year end.	90%

Output 3 – Information sharing/matching

Measure	Achieved As at 28 Feb	Expectation As at 28 Feb (as per SPE)
<b>Information sharing/matching: Quantity</b>		
The number of information matching programmes monitored under Part 10 of the Privacy Act	54	56
The number of new Approved Information Sharing Agreements received for consultation under s96O of the Privacy Act	5	1
The number of formal reports produced that relate to information sharing or information matching programmes,	3	5

Measure	Achieved As at 28 Feb	Expectation As at 28 Feb (as per SPE)
under sections 96O, 96P, 96X or 106 of the Privacy Act		
The number of proposals consulted on involving information sharing or matching between government agencies, completed during the year	25	7
<b>Better Public Services: Quality</b>		
The percentage of recipients of information sharing and matching advice that are satisfied with the service they received from the Privacy Commissioner	Measured at year end.	85%
The percentage of externally reviewed information sharing and matching files that are rated as 3.5 out of 5 or better for quality	Measured at year end.	85%
<b>Better Public Services: Timeliness</b>		
The percentage of information sharing and matching files where advice was delivered within agreed timeframes	93%	100%

*Output 4 - Compliance*

Measure	Achieved As at 28 Feb	Expectation As at 28 Feb (as per SPE)
<b>Compliance: Quantity</b>		
Number of complaints received	490	600
Number of data breach notifications received	70	67
<b>Compliance: Quality</b>		
The percentage of complainants' and respondents' who rate their satisfaction with the complaints handling process as "satisfactory" or better	Measured at year end.	65%
The percentage of complaints files closed by settlement between the parties	46%	40%
Amendments to Codes of Practice meet all statutory requirements	Statutory requirements met for January amendment to Telecommunications Information Privacy Code.	100%
The percentage of externally reviewed complaints investigations that are rated as 3.5 out of 5 or better for quality	100%	85%
	Based on the results of an external review of a sample of complaints files closed between July and December 2016.	

Measure	Achieved As at 28 Feb	Expectation As at 28 Feb (as per SPE)
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**Compliance: Timeliness**

The percentage of open files greater than 6 months old at the year end.	Measured at year end.	10%
Review of the operation of Credit Reporting Code substantially progressed.	Achieved Public submission process completed. Analysis and supplementary research in progress.	Achieved



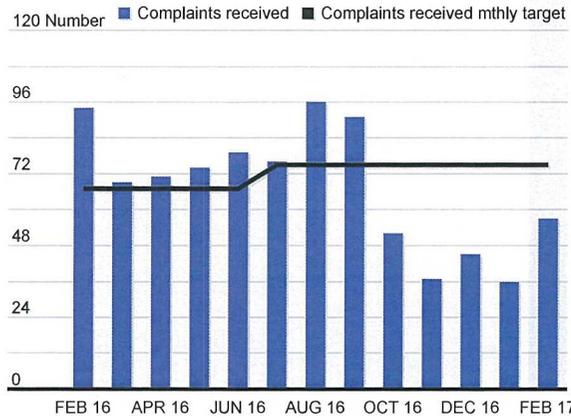
# OFFICE OF THE PRIVACY COMMISSIONER

## TREND ANALYSIS - FEBRUARY 2017

Prepared 21 March 2017

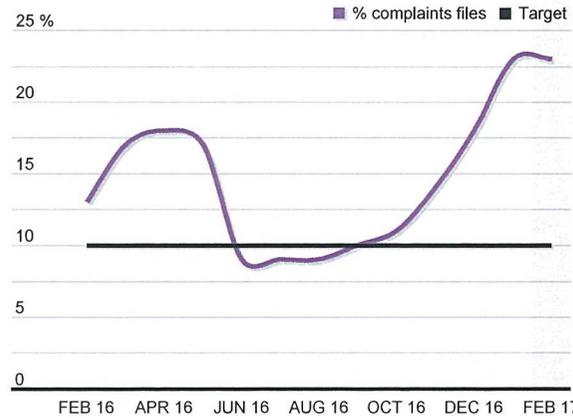
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**Complaints received**



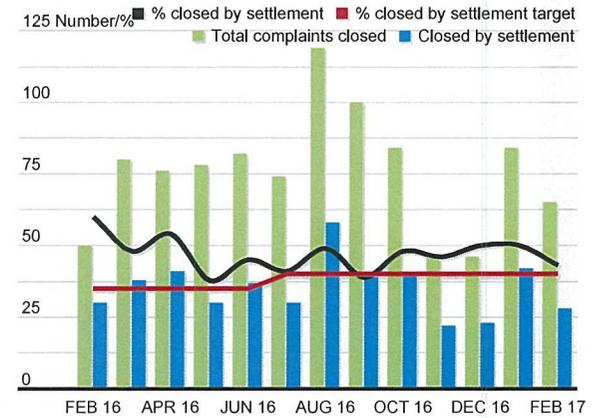
To show the trend in complaints received on a monthly basis across the year.

**% complaints greater than 6 mths old**



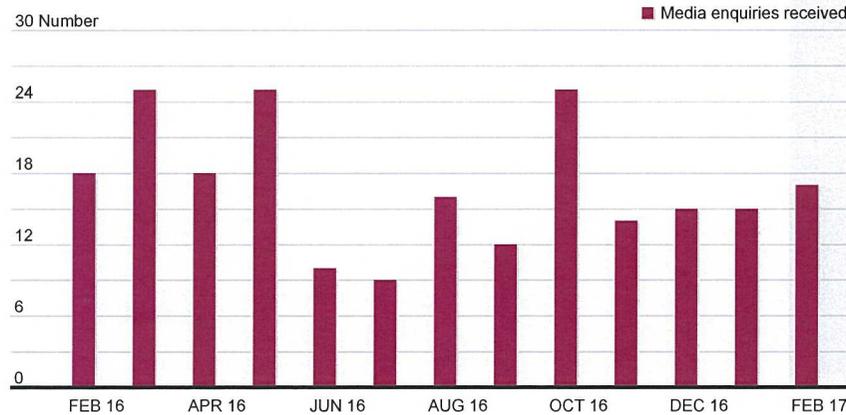
To show the % of complaints work in progress greater than 6 months old against target.

**Closure through settlement**



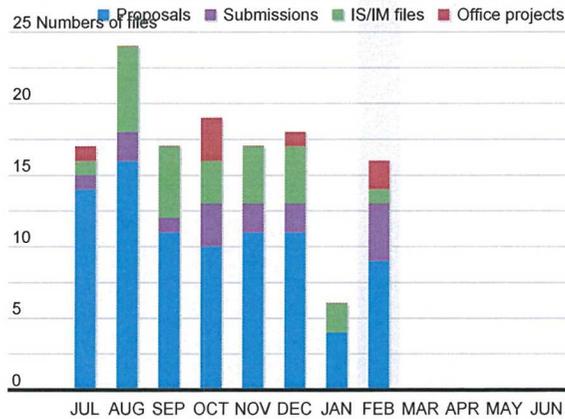
To show the number and % of files closed through settlement between the parties.

**Media Enquiries received**



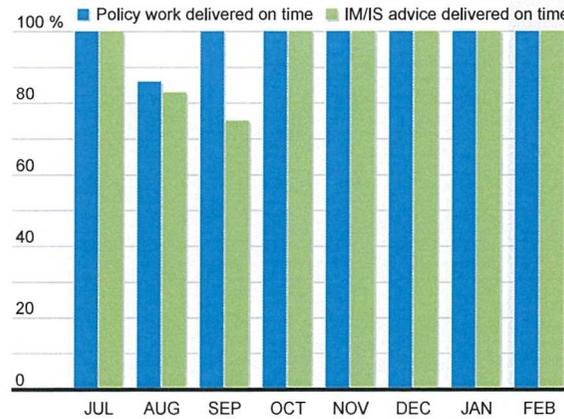
To show the number of media enquiries by month.

**Policy files closed by category**



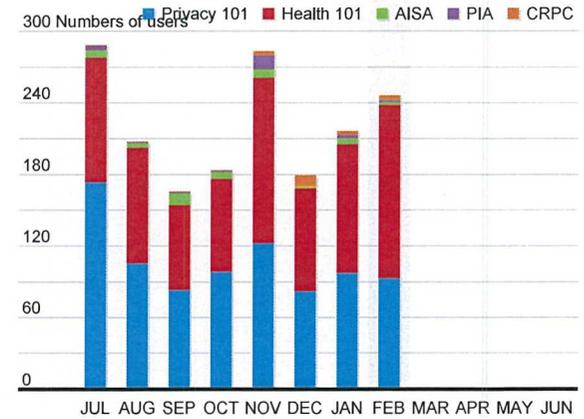
To show the number of policy files that have been completed during the month. The categorisation of these is as per the SPE.

**Policy files completed within timeframes**



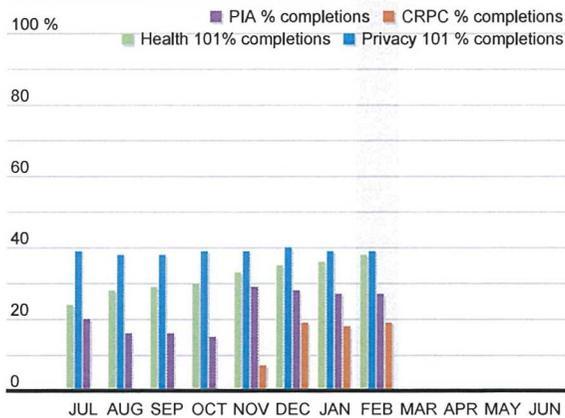
To highlight the timeliness of completion of the Office's policy work. The target (as set in the SPE) is 100%.

**Numbers of users of the on-line modules**



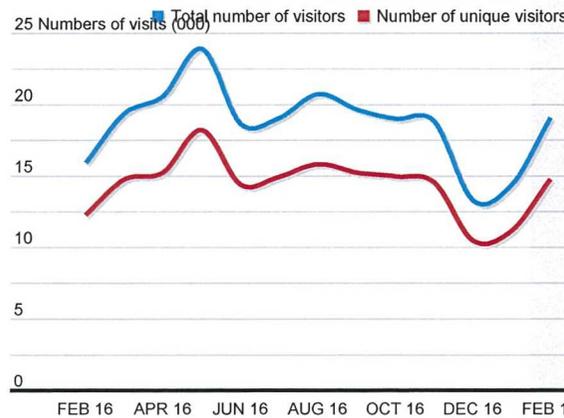
To identify the number of users on a monthly basis who have completed the on-line modules. For the AISA on-line module the figure just represents the numbers registering as it is not possible to ascertain

**% completion of on-line modules**



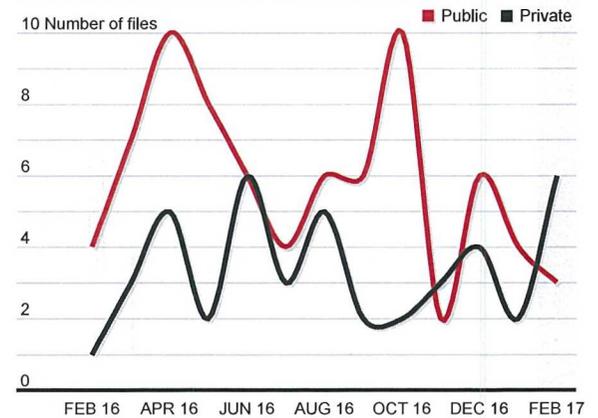
To give an indication of the % of users completing the on-line modules after registering. This result will be shown on a cumulative basis over the course of the year.

**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.