

29 October 2021

Hon Kris Faafoi
Minister of Justice
Parliament Buildings
WELLINGTON

Dear Minister

QUARTERLY REPORT OF THE PRIVACY COMMISSIONER FOR THE PERIOD 1 JULY 2021 TO 30 SEPTEMBER 2021

Highlights

In this reporting period we devoted a large amount of effort to COVID-19 related issues. Our policy function has continued to prioritise COVID-19 responses and has worked closely with the Ministry of Health and other key partners to provide advice on critical privacy issues. We have provided advice on a range of operational issues, such as the development of the MyCovid portal and vaccine certificates.

We focused on the mandatory record-keeping by businesses for contact tracing purposes. This included providing advice to the Department of Prime and Cabinet on their related policy proposals and working with them to ensure businesses had good advice on alternatives to paper-based contact tracing registers. We approached supermarket and pharmacy chains about the visibility of their contact tracing sheets and these companies now use ballot box systems for record keeping.

During this reporting period we also reviewed our progress with the strategic priorities we had set at the start of 2021.

Strategic priorities of the Office

The strategic priorities we had set at the start of 2021 were:

1. Rental sector – collection and use of personal information.
2. Embedding Te Ao Māori perspectives into our work.
3. Improving the performance of public sector agencies in relation to access requests.

The review concluded that the third priority (relating to requests for personal information made to public sector agencies) should revert to business as usual. This decision was made as our

activities with that priority had shifted to helping the Public Service Commission/Te Kawa Mataaho and the Government Chief Privacy Office influence the wider public service increase their access request performance.

We established a new, internally focused, priority: Embedding Privacy 2.0.

Embedding Privacy 2.0

Privacy 2.0 was the review of our operating model that we undertook when the new Privacy Act was being considered by Parliament. The objective was to ensure that going forward the Office delivered the best privacy outcomes possible and fulfilled its mission as an effective, modern privacy regulator.

With recruitment for our new functions now complete, we have established 'Embedding Privacy 2.0' to embed the new operating model across the Office. This operating model will shift us to being more strategic, more data driven and more empowering of our staff. The priority includes filling out our strategic framework and better estimating our impact on the privacy outcomes of New Zealanders. Success will see us working more flexibly, transparently and better able to prioritise our resources to maximise our responsiveness and influence.

Inquiring into rental sector privacy practices

This priority seeks to achieve a balance between landlords and property managers having sufficient personal information to select suitable tenants and ensuring that information practices are not overly intrusive for tenants.

During this reporting period we developed and consulted with key stakeholders refreshed guidance for landlords and tenants. We have also developed our communications and compliance approaches to improve rental sector compliance with the Privacy Act. The guidance for landlords and tenants will soon be released. We will be monitoring and reviewing the impact of this guidance on the rental sector.

Embedding te Ao Māori perspectives in our work

The Privacy Act requires the Commissioner to take account of cultural perspectives on privacy when exercising their functions and powers. The work to embed Te Ao Māori perspectives is founded upon our understanding and obligations to Te Tiriti o Waitangi. We are aware and accept more work needs to be done to grow our understanding of Te Tiriti o Waitangi. We are prioritising building our capability to take a Te Ao Māori perspective on privacy, which will be a multi-year effort to build our capability and connections.

Our Principal Advisor Māori started with us in early August, in a shared capacity with the Commerce Commission. An initial set of priority work streams for the remainder of the 2021/22 year have been framed using the Māori concept of "*ka pai ki muri, ka pai ki mua*", a combination of internal capability building (ki muri) and more outward facing work with stakeholders (ki mua). Our ambition is to share with Iwi/Māori the results of our first phase of developing a kaupapa Māori framework for privacy by May 2022 (Privacy Week).

Information on other activities of our Office

Policy and international related activities

We developed a position paper to inform agencies about the Privacy Act's coverage of biometrics and our approach to regulating biometrics. Biometric information concerns an individual's biological or behaviour characteristics (such as fingerprints) and is personal information as defined by the Privacy Act. The position paper was informed by feedback from agencies on the Cross-Government Biometrics Group, academics in this field, and researchers from the Tikanga in Technology research programme at the University of Waikato. The biometrics position paper is a new tool for our Office to influence the behaviour of agencies to support privacy-protective approaches to using new technologies.

During the reporting period we made formal submissions to Select Committees on the following Bills:

- Crown Minerals (Decommissioning and Other Matters) Bill
- Incorporated Societies Bill
- Maritime Powers Bill
- Governance and Administration Select Committee inquiry into the Supplementary Order Paper on the Births, Deaths, Marriages and Relationships Bill, and
- an oral submission from the Commissioner on the Counter-Terrorism Legislation Bill

In international matters, our primary focus over the last quarter was preparing for the Global Privacy Assembly, which ran from 18-21 October. Our Office co-sponsored a range of resolutions, including the establishment of a Working Group on Data Sharing for the Public Good and principles for government access to personal data held by the private sector. The resolutions are non-binding and a statement of best practice and common principles.

Compliance and enforcement

The number of mandatory Privacy Breach Notifications we are receiving is continuing to increase, with 185 Privacy Breach notifications received and processed during this reporting period. We have a number of investigations ongoing and during this reporting period sent 34 warning or advice letters to agencies.

We issued our first Compliance Notice under the Privacy Act. The notice was issued to the Reserve Bank of New Zealand following their December 2020 cyber-attack. The notice provides a template for the Reserve Bank to report to the Privacy Commissioner on improvements to their policies and procedures that are aimed to make their systems more secure.

We continued our engagement with the Waikato District Health Board following their ransomware attack in May. In August we were supportive of the Board seeking an interim High Court injunction to limit further access or disclosure of the illegally obtained information, following Radio New Zealand reporting on personal information sourced from the dark web. We filed a Memorandum with the Court offering to assist given the important privacy issues

raised by the case. The injunction was subsequently made final without a substantive hearing. We also formally complained to the Broadcasting Standards Authority about Radio New Zealand's reporting on the personal information obtained from the stolen dataset (relating to a child in Oranga Tamariki's care). A decision on this complaint has not yet been made.

We are continuing to work on the joint Inquiry with the Independent Police Conduct Authority regarding the Police practise of photographing members of the public. Wider issues have been identified and the draft report is now due in December.

Complaints and dispute resolution

We have implemented two initiatives to help individuals to get in touch and often resolve privacy complaints with the relevant agency without requiring the use of our complaint investigators. These initiatives are:

- a new privacy complaint triaging tool on our website, and
- a new dedicated complaints assessor position.

During this reporting period we have also been experiencing a reduction in the incoming number of privacy complaints to be investigated. We believe this is due to trivial or simpler complaints being resolved at a lower level. The complaints we are investigating are now more complex and traverse a large number of issues.

The reduction in complaints has provided us with space to induct new team members and invest in staff development. As the Investigations and Dispute Resolution team is a critical source of intelligence insights for the Office we are also participating in a greater amount of cross-functional planning.

Financial report

Financial information and performance against our Statements of Performance Expectations are appended to this report.

Yours sincerely



John Edwards
Privacy Commissioner

Encl: Appendix A: Financials for period ending 30 September 2021
Appendix B: Performance against Statement of Performance Expectations - Year to Date

Appendix A: Financials for period ending 30 September 2021

Statement of Comprehensive Income For the 3 Months to 30 September 2021

Prev. Year YTD Actual \$000		Sept 2021 YTD Actual \$000	Sept 21 YTD Budget \$000	YTD Var \$000	YTD Var %	Year-End Outlook \$000	Year-End SPE Forecast \$000
	Revenue						
2,425	Revenue from Crown	3,696	1,848	1,848	100	7,392	7,392
103	Other Income	258	102	156	153	347	191
5	Interest	-	1	(1)	(100)	2	2
2,533	Total revenue	3,954	1,951	2003	103	7,741	7,586
	Expenditure						
38	Marketing	10	37	(20)	(54)	157	184
-	Audit Fees	-	-	-	-	34	34
50	Depreciation	72	62	10	16	319	310
105	Rental	106	107	(1)	(1)	430	431
467	Operating	287	336	(49)	14	1,295	1,342
853	Staff Costs	1,231	1,315	(84)	(6)	5,142	5,226
1,513	Total expenditure	1,706	1,857	(151)	(8)	7,377	7,527
1,020	Net surplus / (deficit)	2,248	94	2,154	2291	364	59

Statement of Financial Position As at 30 September 2021

	Sept 2021 Actual \$000	Sept 2021 Budget \$000	YTD Var \$000	Year-End Outlook \$000	Year-End SPE Forecast \$000
ASSETS					
Current Assets					
Cash & Cash Equivalent	1,648	1,172	476	1,542	1,057
Debtors and Other Receivables	2,125	30	2,095	80	35
Prepayments	82	100	(18)	100	100
Total Current Assets	3,855	1,302	2,553	1,722	1,192
Current Liabilities					
Creditors and other payables	375	160	215	201	160
Employee Entitlements	346	260	86	346	260
Total Current Liabilities	721	420	301	547	420
Working Capital	3,134	882	2,252	1,175	772
Non-Current Assets					
Property, Plant and Equipment	293	328	(35)	191	197
Intangible Assets	381	395	(14)	595	596
Capital Work in Progress	42	-	42	-	-
Total Non-Current Assets	716	723	(7)	786	793
Non-current Liabilities	21	22	(1)	16	17
Net Assets	3,829	1,583	2,246	1,945	1,548
Public Equity					
Opening Balance	1,581	1,489	92	1,581	1,489
Accumulated Surplus	2,248	94	2,154	364	59

	Sept 2021	Sept 2021	Year-End	Year-End
	Actual	Budget	YTD	SPE
	\$000	\$000	Var	Forecast
			\$000	\$000
			Outlook	Forecast
			\$000	\$000
Total Public Equity	3,829	1,583	2,246	1,945
			1,945	1,548

**Statement of Cash Flows
As at 30 September 2021**

	Sept 2021	Sept 2021	Year-End	Year-End
	Actual	Budget	Outlook	SPE
	\$000	\$000	\$000	Forecast
			\$000	\$000
Cash Flows from Operating Activities				
<i>Cash was Provided from:</i>				
Government Grant	1,848	1,848	7,392	7,392
Other Income	258	103	342	192
Interest	-	1	2	2
	2,106	1,952	7,736	7,586
<i>Cash was Applied to:</i>				
Payments to Suppliers	441	473	1,873	1,987
Payments to Employees	1,285	1,319	5,196	5,230
Payments of GST	(56)	(48)	5	(42)
	1,670	1,744	7,074	7,175
Net Cash Flow applied to Operating Activities	436	208	662	411
Cash Flows from Investment Activities				
Cash was applied to				
Purchase of Fixed Assets	61	12	393	330
Net Cash flows applied to Investing Activities	61	12	393	330
Cash was Provided from:				
Sale of Fixed Assets	-	-	-	-
Net Cash Flow from Investment Activities	(61)	(12)	(393)	(330)
Net Increase/(Decrease) in Cash Held	375	196	269	81
Cash brought forward	1,273	976	1,273	976
Closing cash carried forward	1,648	1,172	1,542	1,057
Cash made up of:				
Cash on hand	-	-	-	-
National Bank - Cheque	161	372	542	257
National Bank - Deposit	1,487	800	1,000	800
	1,648	1,172	1,542	1,057

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

Output 1 – Strategy and Insights

Measure	Achieved As at 30 Sep	Expectation As at 30 Sep (as per SPE)
Number of cross office priorities focussed on globally identified privacy trends or systematic issues.	3	1
Number of published “insights” reports on trends that the office is seeing.	None – looking to do one in December.	1

Output 2 – Communication and Education

Measure	Achieved As at 30 Sep	Expectation As at 30 Sep (as per SPE)
Education module completions as a percentage of education module registrations in the year.	80%	75%
Percentage uptake on media comments made by the Office.	This will be reported on next quarter. The Office is currently developing a new system to measure against this target.	95%
Percentage of media enquiries that are responded to within 2 working days.	100%	100%
Respond to all enquiries within 2 working days.	94%	95%

Output 3 – Compliance and Enforcement

Measure	Achieved As at 30 Sep	Expectation As at 30 Sep (as per SPE)
The percentage of data breach notifications received through NotifyUs that are triaged within 1 working day.	91%	95%
The percentage of externally reviewed compliance notices and Access Directions issued that meet quality review standards.	No reviews have taken place in the first quarter of the year. This will be reported on at year-end.	100%

Measure	Achieved As at 30 Sep	Expectation As at 30 Sep (as per SPE)
The percentage of information matching files reviewed within the mandatory 5-year period as required under S184 of the Privacy Act.	N/A – no information matching provisions were due a 5-year review in the 3 months to 30 September.	100%

Output 4 – Advice and Advocacy

Measure	Achieved As at 30 Sep	Expectation As at 30 Sep (as per SPE)
The percentage of externally reviewed policy and information sharing are rated as 3.5 out of 5 or better for quality.	Measured at year-end.	85%
The Commissioner actively contributes on advice, guidelines and directions by international institutions and guiding bodies, relating to the advancement of privacy rights.	<p>The Office of the Privacy Commissioner has continued to support the development of international advice, guidelines, and directions, over the past quarter. This includes by being a member of the OECD drafting group on principles for government access to personal data held by the private sector.</p> <p>The Office also continued to be a member of the Global Privacy Assembly Executive Committee, the Asia Pacific Privacy Authorities Governance Committee, and also confirmed co-sponsorship of a range of resolutions that will be considered by the Global Privacy Assembly conference in October 2021.</p>	Achieved

Output 5 – Investigations and Dispute Resolution

Measure	Achieved As at 30 Sep	Expectation As at 30 Sep (as per SPE)
The percentage of notified complaints files closed by settlement between the parties.	61%	40%

Measure	Achieved As at 30 Sep	Expectation As at 30 Sep (as per SPE)
The percentage of externally reviewed complaints investigations that are rated as 3.5 out of 5 or better for quality.	Measured at year end.	90%
The percentage of complaint files closed during the year that were less than 6 months old at closure.	74%	85%

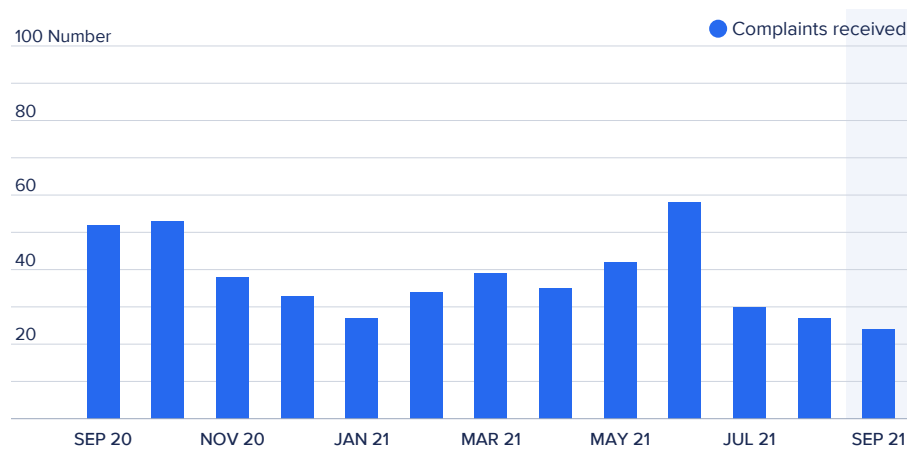


Office of the Privacy Commissioner

KPI TREND REPORT - Q1 - September 2021

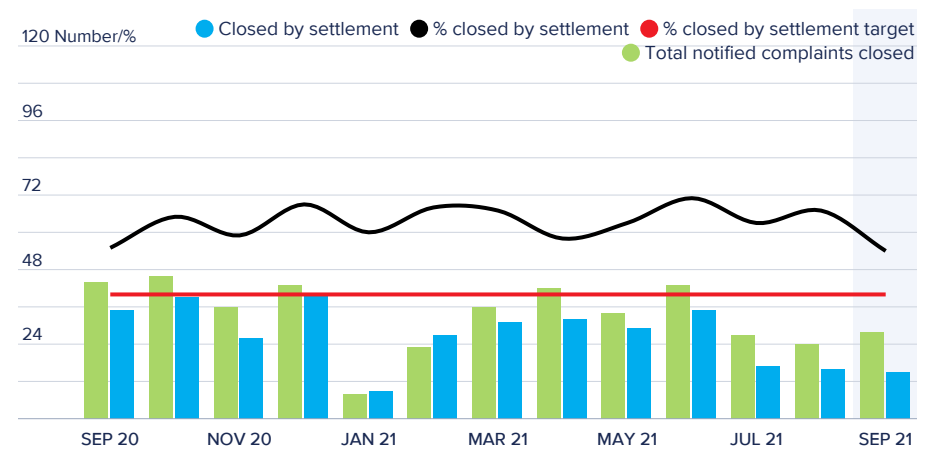
Prepared 14 October 2021

Complaints received



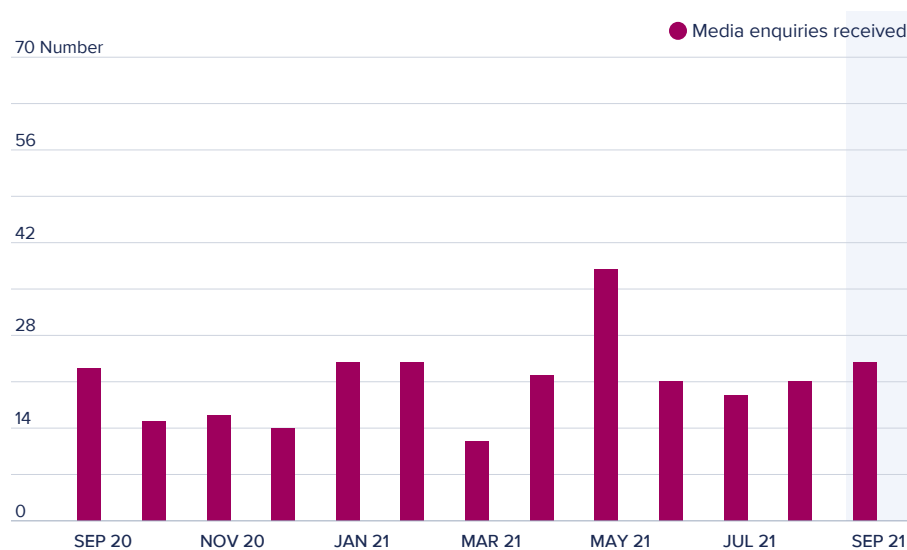
To show the trend in complaints received on a monthly basis across the year.

Closure through settlement

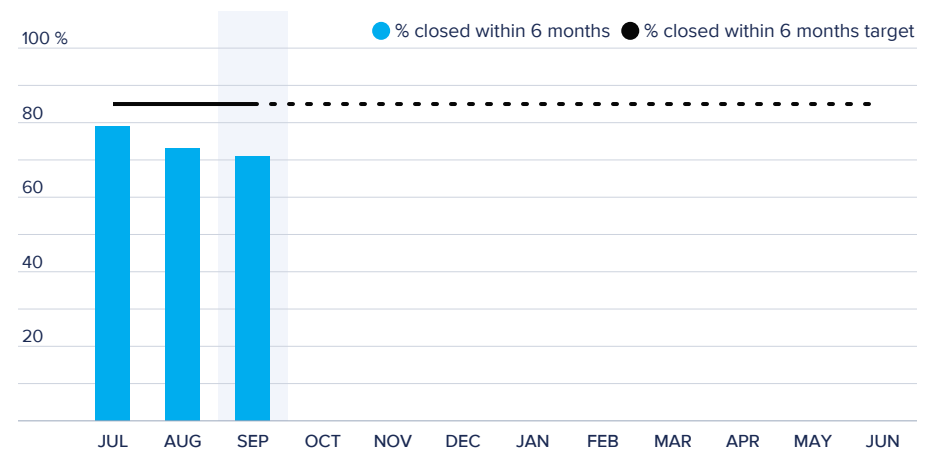


To show the number and % of files closed through settlement between the parties.

Media Enquiries received

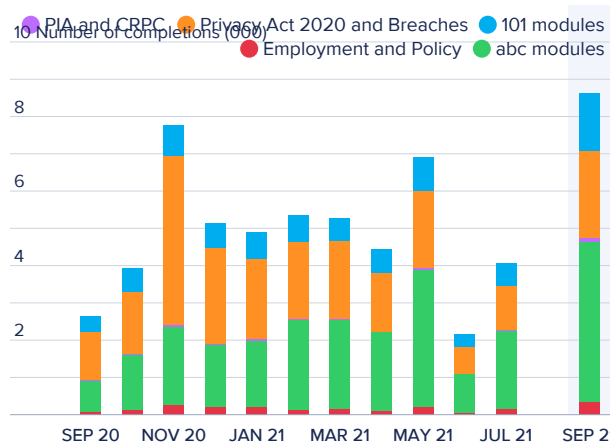


% of complaints closed less than 6 months old



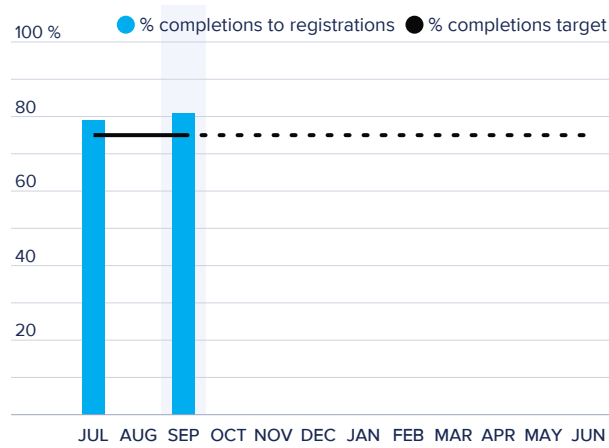
To show the % of complaints closed in the month that were less than 6 months old against the annual target of 85%.

On-line module completions



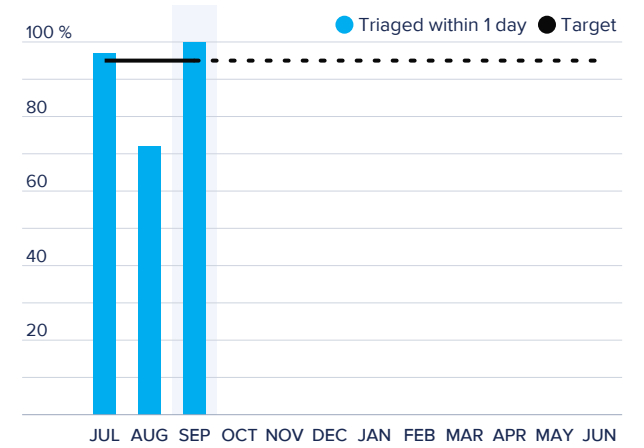
Number of monthly completions of e-learning modules.

Completions as a % of registrations



To show the monthly education module completions as a percentage of education module registrations in the month. This is shown against the annual SPE target of 75%.

Timeliness of breach triaging



To show the % of breach notifications that have been triaged with one day. This is reported against our SPE target of 95%.