

30 November 2018

Hon Andrew Little
Minister of Justice
Parliament Buildings
WELLINGTON

Dear Minister

**FOUR MONTHLY REPORT OF THE PRIVACY COMMISSIONER FOR THE PERIOD
1 JULY 2018 TO 31 OCTOBER 2018**

Highlights

- Work on privacy law reform has continued actively through the reporting period. We presented our submission on the Privacy Bill before the Justice Committee on 10 July; met with you in August to discuss civil penalties and other reforms, and provided further comment on the September Cabinet paper.
- Our Annual report was completed in October and delivered to your office shortly after reporting period.
- The Health ABC e-learning module was launched in early August.
- Our inquiry into MSD's use of section 11 of the Social Security Act began in October.

Dispute resolution

We responded to 3,006 enquiries during the reporting period. Of these, 1,297 enquiries were handled in-house and a further 1,709 were handled through the call management centre.

We closed 350 investigations (a 79% increase on the previous period) and settled 210 of them (60%), keeping above the 40% closure rate KPI. Ninety percent of complaints were determined in under six months. This is on track to meet the of the KPI of 10% of files older than six months at year end.

We have continued to bed in a restructure in the team which took place in the previous reporting period.

Policy related activities

In October we initiated an Inquiry under section 13(1)(m) into the Ministry of Social Development's use of information collection powers under section 11 of the Social Security Act 1964. This Inquiry arose from concerns about the Ministry's collection of information about beneficiary clients from third parties, particularly where fraud allegations are being investigated. The Ministry's powers are governed by a Code of Conduct requiring that clients are approached for the information prior to the powers being exercised, unless an exception applies. The Inquiry will look at the Ministry's application of the Code in practice and any potential infringement on the privacy of individuals resulting from it. The Inquiry aims to report back by May 2018.

During this reporting period we commented on those parts of the Government's legislative programme that have privacy implications.

This included public consultations by agencies on proposals for:

- extensions to the National Health Index;
- regulations trialling online voting for local government elections;
- legislation for the Police Vetting Service;
- State Sector Act Reforms; and
- companies register information related to Directors' addresses and beneficial ownership.

We submitted to Select Committees on the Building Amendment Bill, Insolvency Practitioners Bill and the Taxation (Annual Rates for 2018-19, Modernising Tax Administration, and Remedial Matters) Bill.

We are monitoring and assisting the development of eight Approved Information Sharing Agreements and several other information sharing agreements being developed by agencies. The Gang Intelligence Centre agreement should be provided to Cabinet for approval in late November, and the Department of Internal Affairs' Information Sharing for Identity Services agreement by February.

We finalised and submitted a report to your office on unused information matching agreements in which we noted a number of unused agreements and recommended that their authorising provisions be repealed.

During the next reporting period we are expecting the Government Inquiry into Mental Health and Addiction to report back. We understand that this Inquiry will make recommendations relating to mental health services and information sharing between mental health service providers.

Privacy law reform

I appeared before the Select Committee on 10 July 2018 to discuss my submission on the Privacy Bill. I met with you on 13 August 2018 to discuss the need for the Bill to include civil penalties and other substantive reforms and modernisations. We provided comment on the September Cabinet paper seeking additional policy decisions on the Bill.

We continue to work closely with and support Ministry officials and to provide our detailed comment on the outstanding issues and drafting queries in respect of the Bill. These include issues raised in my submission and by other submitters. This has included ongoing discussions on the process for whitelisting countries as providing comparable privacy safeguards to New Zealand and identifying the need for further work to be undertaken on this important matter.

Communications

We launched Health ABC at the beginning of August 2018. The module was the second of our “mini modules”, which are proving to be popular learning tools. Uptake for the mini modules has been strong. HealthABC had 1,200 registrations in the four months to 31 October.

We began the scoping phase for an e-learning module for the education sector, particularly aimed at Boards of Trustees and school administrative staff.

Media interest continued at a relatively high level with 95 media enquiries over the period.

Outreach

The Office continued its programme of regional visits and during the reporting period visited Timaru, Oamaru, Dunedin, Palmerston North, Whakatane and Rotorua.

We delivered 43 presentations to external groups during the four month period.

Our PrivacyLive speaker series continued with lunchtime events in Auckland and Wellington.

Codes of Practice

During this period we completed a review of the Credit Reporting Privacy Code. The review included consultation with interested parties, including credit reporters. We prepared the amendment (subsequently issued in November) that makes a number of changes to the Code. These include clearer access rights for individuals to credit scores, quicker access to credit reports, allowing use of the credit reporting system to return money owed to individuals and enabling individuals at risk of credit fraud to obtain credit freezes across all credit reporters with a single application.

International activity

The Commissioner represented the Office at three proximately scheduled international meetings in October:

- OECD meeting on protection of children in a connected world in Zurich, Switzerland. The Commissioner moderated a session on taking stock of recent policy developments and of progress in multi-stakeholder cooperation for the protection of children online.
- A joint OECD – International Conference of Data Protection and Privacy Commissioners (ICDPPC) workshop on promoting comparability of data breach notification reporting in Paris, France.

- 40th ICDPPC Conference in Brussels. The ICDPPC is the premier global conference for data protection and privacy authorities and meets annually. The Conference adopted one resolution proposed by New Zealand on the Conference census.

In relation to New Zealand's EU adequacy status, we contributed to the Ministry of Foreign Affairs and Trade's response to the European Commission seeking information on New Zealand's legal framework for law enforcement and intelligence agency access to personal information.

We provided our seventh periodic update report to the European Commission in early July as the competent supervisory authority for the application of legal data protection standards in New Zealand.

Financial report

The Office is reporting a deficit of \$83k against a budgeted surplus for the 4 months to October of \$54k. The main reason for the difference is due to income being lower than expected by \$182k as a result of the delayed confirmation on the Department of Internal Affairs annual grant (\$58k) and the additional Privacy Act transitional income not being received as budgeted (\$126k).

Cash balances are lower than budget, partly due to the income as per above and also due to the opening cash being lower than budget,

The Office has undertaken a significant IT upgrade during the period. Despite the final structure being different to what was initially budgeted (Cloud versus stand-alone servers) the total non-current assets and cash additions for the 4-month period are close to the budgeted costs. Operating costs for the Cloud environment are likely to be different to the budgeted costs but the forecast figures have taken this into account.

Yours sincerely



John Edwards
Privacy Commissioner

Encl: Appendix A: Financials for period ending 31 October 2018
 Appendix B: Performance against Statements of Service Performance - Year to Date
 Appendix C: Trend Analysis

Appendix A: Financials for period ending 31 October 2018

Statement of Comprehensive Income For the 12 Months to 30 June 2018

Prev. Year YTD Actual \$000		October 2018 YTD Actual \$000	October 2018 YTD Budget \$000	YTD Var \$000	YTD Var %	Year-End Outlook \$000	Year-End SPE Forecast \$000
	Revenue						
1,656	Revenue from Crown	1,656	1,783	(127)	(7)	5,096	5,096
104	Other Income	51	105	(54)	(51)	200	197
13	Interest	9	10	(1)	(10)	29	30
1,773	Total revenue	1,716	1,898	(182)	(10)	5,325	5,323
	Expenditure						
22	Marketing	20	25	(5)	(20)	127	139
-	Audit Fees	-	-	-	-	30	30
66	Depreciation	71	81	(10)	(12)	242	252
138	Rental	140	140	-	-	421	421
257	Operating	338	384	(46)	(12)	966	940
1,227	Staff Costs	1,230	1,214	16	1	3,629	3,613
1,710	Total expenditure	1,799	1,844	(45)	(2)	5,415	5,395
63	Net surplus / (deficit)	(83)	54	(137)	(254)	(89)	(72)

Statement of Financial Position As at 31 October 2018

	October 2018 Actual \$000	October 2018 Budget \$000	YTD Var \$000	Year-End Outlook \$000	Year-End SPE Forecast \$000
ASSETS					
Current Assets					
Cash & Cash Equivalent	760	1,116	(356)	650	743
Debtors and Other Receivables	103	5	98	75	26
Inventory	18	25	(7)	18	25
Prepayments	89	25	64	60	25
Total Current Assets	970	1,171	(201)	803	819
Current Liabilities					
Creditors and other payables	183	135	48	189	135
Employee Entitlements	228	230	(2)	227	230
Total Current Liabilities	411	365	46	416	365
Working Capital	559	806	(247)	387	454
Non-Current Assets					
Property, Plant and Equipment	352	367	(15)	541	566
Intangible Assets	185	193	(8)	176	208
Capital Work in Progress	26	-	26	-	-
Total Non-Current Assets	563	560	3	717	774
Non-current Liabilities	25	26	(1)	13	14
Net Assets	1,097	1,340	(243)	1,091	1,214

	October 2018	October 2018		Year-End	Year-End
	Actual	Budget	YTD Var	Outlook	SPE Forecast
	\$000	\$000	\$000	\$000	\$000
Public Equity					
Opening Balance	1,180	1,286	(106)	1,180	1,286
Accumulated Surplus	(83)	54	(137)	(89)	(72)
Total Public Equity	1,097	1,340	(243)	1,091	1,214

**Statement of Cash Flows
As at 31 October 2018**

	Oct 2018	Oct 2018	Year-End	Year-End
	Actual	Budget	Outlook	SPE Forecast
	\$000	\$000	\$000	\$000
Cash Flows from Operating Activities				
<i>Cash was Provided from:</i>				
Government Grant	1,656	1,783	5,096	5,096
Other Income	3	101	200	193
Interest	9	10	29	30
	1,668	1,894	5,325	5,319
<i>Cash was Applied to:</i>				
Payments to Suppliers	547	564	1,577	1,557
Payments to Employees	1,214	1,207	3,613	3,606
Payments of GST	(20)	(32)	-	(11)
	1,741	1,739	5,190	5,152
Net Cash Flow applied to Operating Activities	(73)	155	135	167
Cash Flows from Investment Activities				
Cash was applied to				
Purchase of Fixed Assets	218	205	536	590
Net Cash flows applied to Investing Activities	(218)	(205)	(536)	(590)
Cash was Provided from:				
Sale of Fixed Assets	-	-	-	-
Net Cash Flow from Investment Activities	(218)	(205)	(536)	(590)
Net Increase/(Decrease) in Cash Held	(291)	(50)	(401)	(423)
Cash brought forward	1,051	1,166	1,051	1,166
Closing cash carried forward	760	1,116	650	743
Cash made up of:				
Cash on hand	-	-	-	-
National Bank - Cheque	360	316	350	43
National Bank - Deposit	400	800	300	700
	760	1,166	650	743

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

Output 1 - Guidance, education and awareness

Measure	Achieved As at 31 October	Expectation As at 31 Oct (as per SPE)
Guidance, education and awareness: Quantity		
Number of people completing education modules on the online system	3,177	1,167
Presentations at conferences / seminars	45	30
Public enquiries received and answered	3,006	2,500
Media enquiries received and answered	100	67
Guidance, education and awareness: Quality		
Website contains all current published guidance from the Privacy Commissioner, and additional resources to support compliance with the Act.	Achieved	Achieved
The office actively 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%
Guidance, education and awareness: Timeliness		
Respond to all enquiries within 2 working day	95%	100%

Output 2 - Policy and Research

Measure	Achieved As at 31 October	Expectation As at 31 Oct (as per SPE)
Policy and Research: Quantity		
The number of Consultations, Submissions and Office Projects completed in the year ¹	50	50

¹ This includes draft Bills, Cabinet Papers, Privacy Impact Assessments, consultations carried out under a statutory requirement to consult with the Privacy Commissioner, early consultations on new policy proposals, select committee submissions, reports to ministers and research projects. This

Measure	Achieved As at 31 October	Expectation As at 31 Oct (as per SPE)
Identifiable progress in international efforts in which we are actively engaged to work towards more sustainable platforms for cross border co-operation	Achieved The Office was represented at several international meetings during the period including the ICDPPC and OECD.	Achieved

Policy and Research: Quality

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, information sharing and information matching files that are rated as 3.5 out of 5 or better for quality. ²	Measured at year-end	85%

Policy and Research: Timeliness

The percentage of policy files where advice was delivered within agreed timeframes	92%	100%
Responses to requests for input into legislative reform proposals are made available within agreed timelines.	Measured at year-end	100%

Output 3 – Information sharing/matching

Measure	Achieved As at 31 October	Expectation As at 31 Oct (as per SPE)
Information sharing/matching: Quantity		
The number of information matching programmes monitored under Part 10 of the Privacy Act	53	50
The number of new Approved Information Sharing Agreements received for consultation under s96O of the Privacy Act	1	1
The number of formal reports produced that relate to information sharing or information matching	1 - report produced under s106	3

measure is a combination of 3 separate measures reported on in 16/17 and included in the 17/18 SPE. Comparative figures represent the addition of these 3 separate results.

² This target has been combined with a similar target that was included in Output 3 in the prior year and the 17/18 SPE.

Measure	Achieved As at 31 October	Expectation As at 31 Oct (as per SPE)
programmes, under sections 96P, 96X, 96O or 106 of the Privacy Act		
The number of proposals consulted on involving information sharing or matching between government agencies, completed during the year	10	10

Better Public Services: Quality

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%
---	----------------------	-----

Better Public Services: Timeliness

The percentage of information sharing and matching files where advice was delivered within agreed timeframes	100%	100%
--	------	------

Output 4 - Compliance

Measure	Achieved As at 31 October	Expectation As at 31 Oct (as per SPE)
Compliance: Quantity		
Number of complaints received	284	300
Number of data breach notifications received	79	43
Compliance: Quality		
The percentage of complaints files closed by settlement between the parties	60%	40%
Amendments to codes of practice meet all statutory requirements	Achieved The Credit Reporting Privacy Code Amendment No 14 went out for consultation during the period.	100%
The percentage of externally reviewed complaints investigations that are rated as 3.5 out of 5 or better for quality	External review carried out every 6 months. First review due in January 2018.	85%
Recommendations following the Credit Reporting Privacy Code review are actioned.	Achieved	Achieved

Measure	Achieved As at 31 October	Expectation As at 31 Oct (as per SPE)
	As a result of the review, amendments were proposed to the Credit Reporting Privacy Code as noted above.	

Compliance: Timeliness

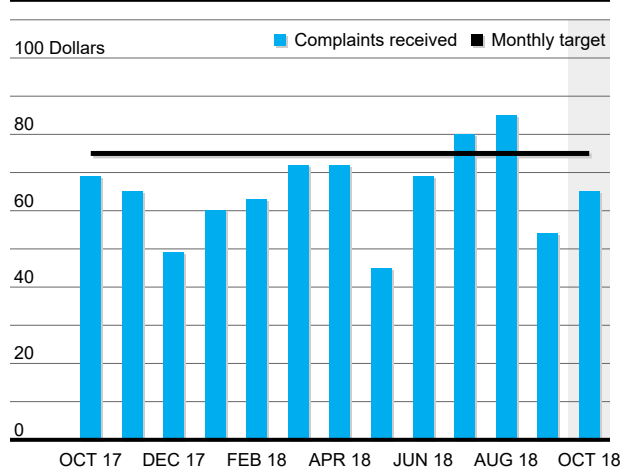
The percentage of open files greater than 6 months old at the year end	Measured at year end.	10%
--	-----------------------	-----

OFFICE OF THE PRIVACY COMMISSIONER

KPI TREND REPORT - OCTOBER 2018

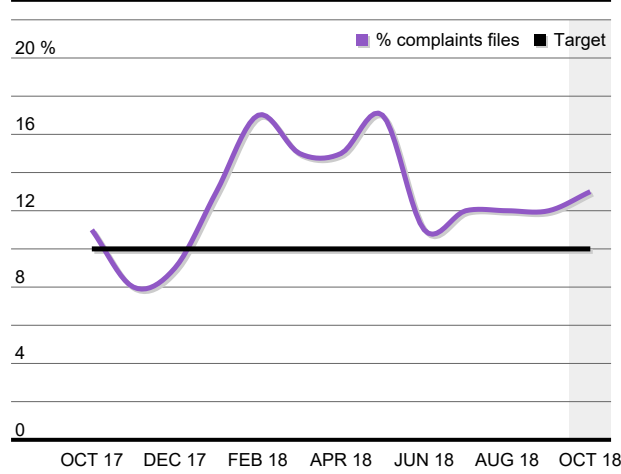
Prepared 13 November 2018

Complaints received



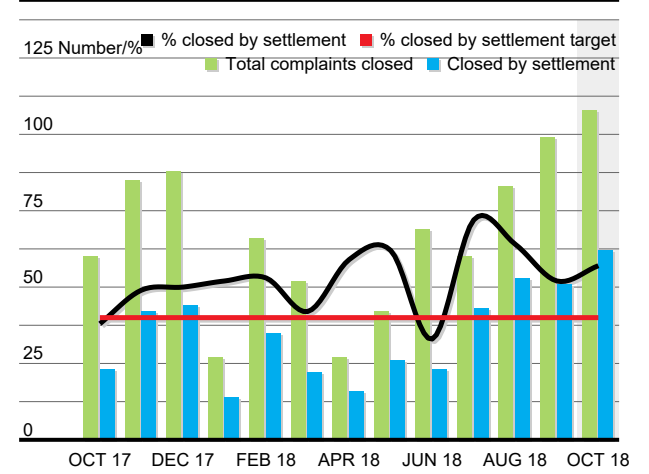
To show the trend in complaints received on a monthly basis across the year.

% complaints greater than 6 mths old



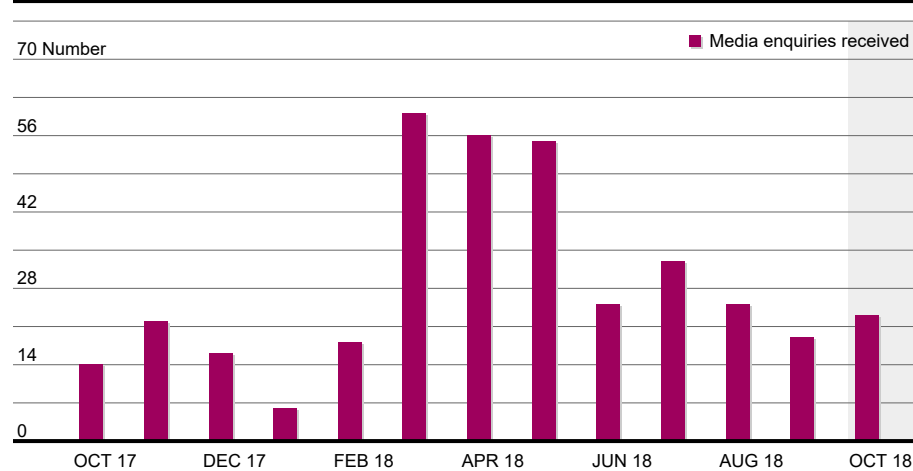
To show the % of complaints work in progress greater than 6 months old against target.

Closure through settlement



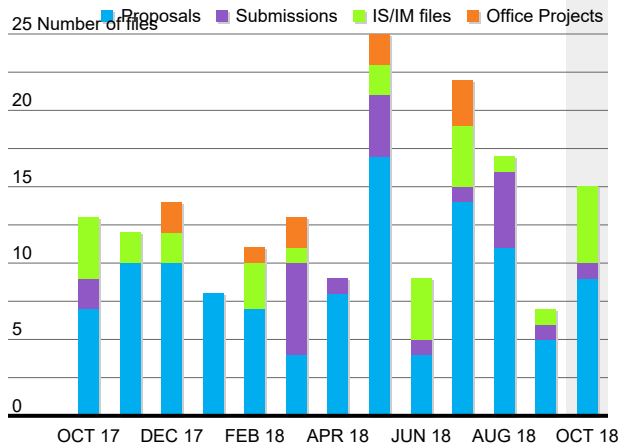
To show the number and % of files closed through settlement between the parties.

Media Enquiries received



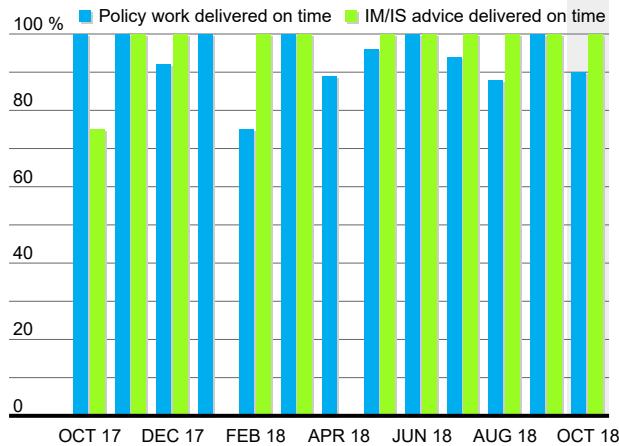
To show the number of media enquiries by month.

Policy files closed by category



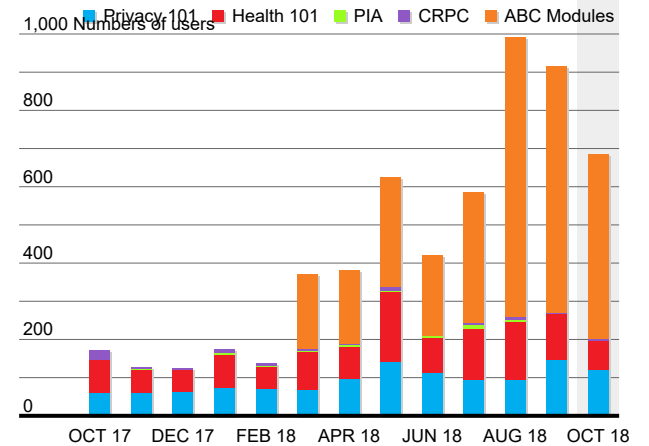
To show the number of policy files that have been completed during the month. The categorisation of these is as per the SPE.

Policy files completed within timeframes



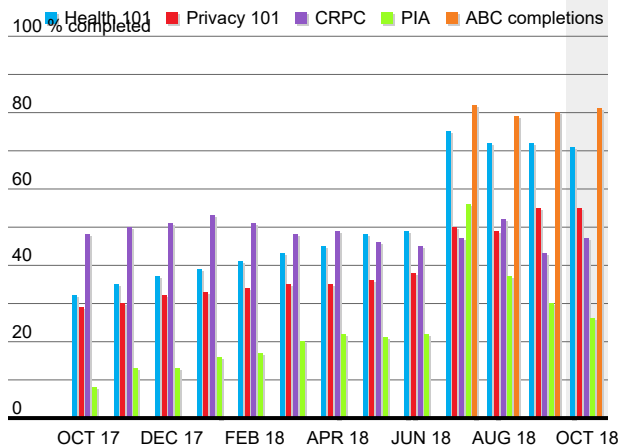
To highlight the timeliness of completion of the Office's policy work. The target (as set in the SPE) is 100%.

Number of on-line module completions



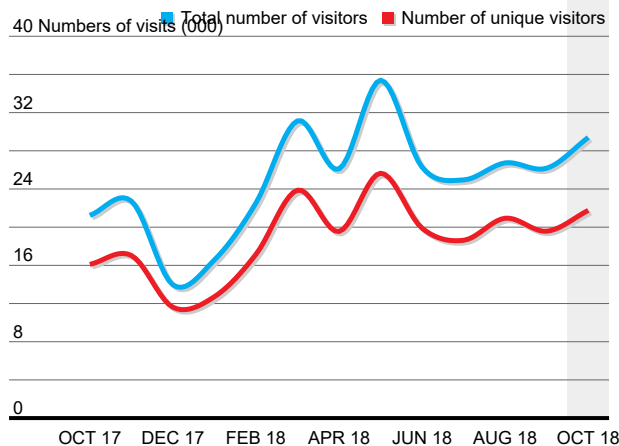
Number of monthly module completions. This chart only includes those modules where completion is calculated. Note that due to a change in reporting, the ABC completion data is only shown from March 2018.

% completion of on-line modules



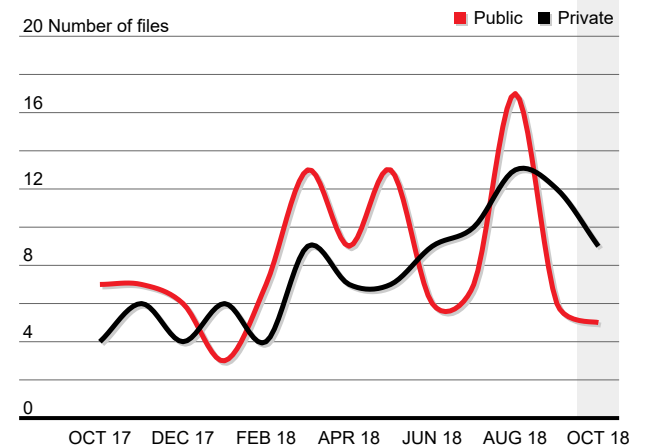
Cumulative % of users completing on-line modules. Results are shown as cumulative over the course of the financial year.

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.