

31 July 2018

Hon Andrew Little
Minister of Justice
Parliament Buildings
WELLINGTON

Dear Minister

**FOUR MONTHLY REPORT OF THE PRIVACY COMMISSIONER FOR THE PERIOD
1 MARCH 2018 TO 30 JUNE 2018**

Highlights

- Our Privacy Forum at Te Papa Tongarewa on 10 May was the highlight of Privacy Week 2018 and attracted over 300 representatives from the public and private sectors, and wider civil society.
- We launched the Privacy Trust Mark during May, to recognise and incentivise best practice privacy activities. Two online services were the first recipients - the Department of Internal Affairs' RealMe identity verification service, and Trade Me's transparency reporting.
- We submitted a comprehensive submission on the Privacy Bill, including a number of recommendations for inclusion in the Bill. During the period we offered public briefings on the Privacy Bill through law firms and consultancies, and reached over 1,000 individuals over the period.

Dispute resolution

We responded to 3,240 enquiries during the reporting period. Of these, 1,427 enquiries were handled in-house and a further 1,813 were handled through the call management centre.

We completed a review of our enquiries function, resulting in the contract with the call management centre being continued, and the appointment of two Assistant Investigators to help manage overflow.

We closed 195 investigation files and settled 90 of them (46%), keeping above the 40% closure rate KPI. We ended the year with 89.1% of complaints determined in under six months. This is within 0.9% of the KPI.

We also restructured the team, with the appointment of four Senior Investigators, along with three Investigators, and the two Assistant Investigators reporting up to the Manager, Investigations and Dispute Resolution. The changes are working well and the team is settled and productive.

Policy related activities

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

We submitted to Select Committees on the following Bills:

- Births, Deaths, Marriages and Relationships Registration Bill
- Corrections Amendment Bill
- Earthquake Commission Amendment Bill
- End of Life Choice Bill
- Employment Relations Amendment Bill
- Health (National Cervical Screening Programme) Amendment Bill
- Health Practitioners Bill
- Military Justice Legislation Amendment Bill
- State Sector and Crown Entities Reform Bill

On 10 May we launched the Privacy Trust Mark to recognise and incentivise privacy best practice. Two online services were awarded Trust Marks – the Department of Internal Affairs' RealMe identity verification service, and Trade Me's transparency reporting. We have begun assessing a small number of other applications for Trust Marks.

We are monitoring and assisting the development of seven Approved Information Sharing Agreements. In coming months we expect two agreements to be put in place - the Police-led Gang Intelligence Centre, and an agreement to facilitate internal sharing within the Department of Internal Affairs.

We continue to attend the meetings of Data Protection and Use Policy working group convened by the Social Investment Agency. This working group was established following our Inquiry into the Ministry of Social Development's Collection of Individual Client-Level Data from Non-Governmental Organisations.

During the period we made a submission to the Law Commission on the Abortion Law Reform. We also provided the Law Commission with some advice to inform their ongoing project on the use of DNA in criminal prosecutions.

Privacy law reform

Prior to the Privacy Bill being introduced on 27 March, we provided comment on the various drafts and met regularly with Ministry officials. We subsequently provided detailed comment on the Introduction version and outstanding drafting matters.

On 31 May we provided the Justice Select Committee with an extensive submission on the Bill making a number of recommendations on the further substantive reforms that are

needed to modernise our law to take into account technological and social development and to align with emerging best practice internationally.

The submission made recommendations for further substantive reforms:

- civil penalties
- improved agency accountability for compliance
- personal information portability
- protections against re-identification
- a Law Commission recommendation rejected by the previous government (the role of the Director of Human Rights Proceedings)
- enhancing the existing privacy principles to provide an effective right to erasure and
- to limit privacy harms from automated decision-making, through algorithmic transparency, and the right to object to automated processing.

I am looking forward to an opportunity to discuss these matters with you.

During June we have continued to work with Ministry officials to discuss outstanding issues in the Bill, including in relation to APEC cross border privacy rules.

Communications

We released an animation on everyday privacy during May with information about everyday privacy rights and responsibilities in workplaces, in public, and at home. The animation has an accompanying printable infographic. Both the animation and infographic have been produced in te Reo Māori.

We released high-level joint guidance with the Chief Government Data Steward in May – *Principles for the safe and effective use of data and analytics*. We also released joint guidance with the Domain Name Commission: *Being privacy conscious with domain name registrations*.

The Office received unusually high levels of media interest in the reporting period, due to the Facebook / Cambridge Analytica concerns, the effect of the GDPR, the Privacy Bill, and the Vector data breach.

There was a particularly high level of media activity in 2017/18 with 345 media enquiries received (up 59% from 2016/17 activity and comparable activity in 2015/16).

Outreach

Privacy Week - Privacy Forum

Our Privacy Forum at Te Papa Tongarewa on 10 May was the highlight of Privacy Week 2018 and attracted over 300 representatives from the public and private sectors, and wider civil society. Your address to the delegates was very well received and provided an ideal platform for the law reform theme for the day. We received very positive feedback on the event.

We gave ninety-seven (97) presentations to external groups during 2017/18, including a concentrated round of briefings to stakeholder groups in relation to the Privacy Bill. We partnered with law firms and consultancies to brief clients on the Bill at lunchtime and after work sessions. Over eight weeks we reached over 1,000 representatives of the business sector in Auckland and Wellington.

PrivacyLive

Our PrivacyLive series continued throughout the period with five public events held in Auckland and Wellington with a range of speakers:

- Cory Doctorow, Wellington
- Orwell's 1984 – panel discussion, Auckland
- CERT NZ update and incident report, Katie Wellington, Wellington
- Rhema Vaithianathan, Working Towards Trusted Data Use, Auckland
- Privacy Bill – fireside chat with the Privacy Commissioner, Auckland.

We ran two regional outreach visits during the period, to Hamilton / Tokoroa, and to Christchurch.

Codes of Practice

During the period the Office completed a major multi-year review of the operation of the Credit Reporting Privacy Code and, in particular, the introduction of comprehensive credit reporting. This resulted in the release of two substantial reports in May and June with a number of recommendations for code amendments and for action by industry stakeholders to better achieve public interest and consumer objectives.

International activity

The Office was represented at two international meetings in June:

- The Commissioner participated as an observer to the 36th plenary meeting of the Consultative Committee for the Protection of Individuals with regard to the Automatic Processing of Personal Data (T-PD) in Strasbourg, France.
- The Commissioner and General Counsel participated in the 49th meeting of the Asia Pacific Privacy Authorities (APPA) Forum in San Francisco, USA.

Financial report

The financials show a modest net surplus for the year of \$52,000, whereas a small deficit had been budgeted. The surplus results from significantly lower staff costs attributable to higher than expected turnover. To maintain service delivery standards we have needed to utilise short term contracted personnel until new staff are recruited and become fully operational. The need to contract services resulted in an increase in operating costs. Overall the increased operating expenditure has been offset by the reduced staff costs.

The capital work in progress is directly related to the ongoing development of e-learning modules.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'John Edwards', with a stylized, cursive style.

John Edwards
Privacy Commissioner

Encl: Appendix A: Financials for period ending 30 June 2018
 Appendix B: Performance against Statements of Service Performance - Year to Date
 Appendix C: Trend Analysis

Appendix A : Financials for period ending 30 June 2018

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

Prev. Year YTD Actual \$000		June 2018 YTD Actual \$000	June 2018 YTD Budget \$000	YTD Var \$000	YTD Var %	Year-End SPE Forecast \$000
	Revenue					
4,970	Revenue from Crown	4,970	4,970	-	-	4,970
164	Other Income	252	203	49	24	203
34	Interest	36	27	9	33	27
5,168	Total revenue	5,258	5,200	58	1	5,200
	Expenditure					
55	Marketing	125	94	31	33	94
30	Audit Fees	30	30	-	-	30
185	Depreciation	194	223	(29)	(13)	223
411	Rental	417	421	(4)	(1)	421
693	Operating	944	720	224	31	720
3,718	Staff Costs	3,496	3,780	(284)	(8)	3,780
5,091	Total expenditure	5,206	5,268	(62)	(1)	5,268
77	Net surplus / (deficit)	52	(68)	120	176	(68)

Statement of Financial Position As at 30 June 2018

	June 2018 Actual \$000	June 2018 Budget \$000	YTD Var \$000	Year-End SPE Forecast \$000
ASSETS				
Current Assets				
Cash & Cash Equivalent	1,051	848	203	848
Debtors and Other Receivables	68	43	25	43
Inventory	18	25	(7)	25
Prepayments	53	23	30	23
Total Current Assets	1,190	939	251	939
Current Liabilities				
Creditors and other payables	205	120	85	120
Employee Entitlements	212	260	(48)	260
Total Current Liabilities	417	380	37	380
Working Capital	773	559	214	559
Non-Current Assets				
Property, Plant and Equipment	299	340	(41)	340
Intangible Assets	70	186	(116)	186
Capital Work in Progress	61	-	61	-
Total Non-Current Assets	430	526	(96)	526
Non-current Liabilities	32	34	(2)	34
Net Assets	1,171	1,051	120	1,051
Public Equity				
Opening Balance	1,119	1,119	-	1,119
Accumulated Surplus	52	(68)	120	(68)
Total Public Equity	1,171	1,051	120	1,051

**Statement of Cash Flows
As at 30 June 2018**

	June 2018	June 2018	Year-End
	Actual	Budget	SPE
	\$000	\$000	Forecast
			\$000
Cash Flows from Operating Activities			
<i>Cash was Provided from:</i>			
Government Grant	4,970	4,970	4,970
Other Income	227	203	203
Interest	36	27	27
	5,233	5,200	5,200
<i>Cash was Applied to:</i>			
Payments to Suppliers	1,455	1,280	1,280
Payments to Employees	3,530	3,784	3,784
Net GST	34	(1)	(1)
	5,019	5,063	5,063
Net Cash Flow applied to Operating Activities	214	137	137
Cash Flows from Investment Activities			
Cash was applied to			
Purchase of Fixed Assets	158	300	300
<i>Net Cash flows applied to Investing Activities</i>	(158)	(300)	(300)
Cash was Provided from:			
Sale of Fixed Assets	1	-	-
Net Cash Flow from Investment Activities	(157)	(300)	(300)
Net Increase/(Decrease) in Cash Held	57	(163)	(163)
Cash brought forward	994	1,011	1,011
Closing cash carried forward	1,051	848	848
Cash made up of:			
Cash on hand	-	-	-
National Bank - Cheque	551	48	48
National Bank - Deposit	500	800	800
	1,051	848	848

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

Output 1 - Guidance, education and awareness

Measure	Achieved As at 30 June	Expectation As at 30 June (as per SPE)
Guidance, education and awareness: Quantity		
Number of people completing education modules on the online system*	Achieved – 4,845 2,286 relate to completions of post course quizzes in the year. A further 2,559 relate to completions of the final unit of the Privacy ABC module (which went live towards the end of June 2017).	2,500
Presentations at conferences / seminars	Achieved - 96	90
Public enquiries received and answered *	Achieved - 9,147	7,500
Media enquiries received and answered *	Achieved - 345	200
Blog posts and case notes created.	Not achieved – 60 50 Blog Posts and 10 Case notes.	90
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.	To be measured through annual survey – results due next month	85%
Guidance, education and awareness: Timeliness		
Respond to all enquiries within 2 working days.	Substantially achieved – 95%	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 30 June	Expectation As at 30 June (as per SPE)
Policy and Research: Quantity		
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;	107	100
- Submissions and other formal reports, including submissions to select committees; and	14	15
- Office projects, including research projects.	11	10
Identifiable progress in international efforts in which we are actively engaged to work towards more sustainable platforms for cross border co-operation.	Ongoing work with OECD to develop internationally comparable breach notification metrics – a survey was developed during the period.	Achieved
Policy and Research: Quality		
The percentage of recipients of policy advice who are satisfied with the service they received from the Privacy Commissioner.	To be measured through annual survey – results due next month	85%
Our participation in the law reform process is valued by the Ministry of Justice.	To be measured through annual survey – results due next month	Achieved
The percentage of externally reviewed policy files that are rated 3.5 out of 5 or better for quality.	The external review of the policy files is still to take place.	85%
Policy and Research: Timeliness		
The percentage of policy files where advice was delivered within agreed timeframes	Substantially achieved – 97%	100%
Responses to requests for input into law reform are made available within agreed timelines.	To be measured through annual survey – results due next month	100%

Output 3 – Information sharing/matching

Measure	Achieved As at 30 June	Expectation As at 30 June (as per SPE)
Information sharing/matching: Quantity		
The number of information matching programmes monitored under Part 10 of the Privacy Act.	55 (48 current programmes, 2 inactive programmes and 5 that were replaced by AISAs in August 2017)	54

Measure	Achieved As at 30 June	Expectation As at 30 June (as per SPE)
The number of new Approved Information Sharing Agreements received for consultation under s96O of the Privacy Act	4	2
The number of formal reports produced that relate to information sharing or information matching programmes, under sections 96P, 96X, 96O or 106 of the Privacy Act	9	8
The number of proposals consulted on involving information sharing or matching between government agencies, completed during the year	38	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	To be measured through annual survey – results due next month	85%
The percentage of externally reviewed information sharing and matching files that are rated as 3.5 out of 5 or better for quality	The external review of the information sharing and matching files is still to take place.	85%
The Trusted Sharing Consultancy Service, is valued by those agencies that have engaged the Office in this capacity.	To be measured through annual survey – results due next month	Achieved

Better Public Services: Timeliness

The percentage of information sharing and matching files where advice was delivered within agreed timeframes	Substantially achieved – 98%	100%
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Output 4 - Compliance

Measure	Achieved As at 30 June	Expectation As at 30 June (as per SPE)
Compliance: Quantity		
Number of complaints received	Not achieved - 807	900
Number of data breach notifications received	168	100
Compliance: Quality		
The percentage of complainants' and respondents' who rate their satisfaction with the complaints handling process as "satisfactory" or better	Full results from the survey are not yet available. Results expected next month.	60%
The percentage of complaints files closed by settlement between the parties	Achieved – 50%	40%
Amendments to Codes of Practice meet all statutory requirements	No amendments issued during the period.	100%

Measure	Achieved As at 30 June	Expectation As at 30 June (as per SPE)
The percentage of externally reviewed complaints investigations that are rated as 3.5 out of 5 or better for quality	<p>95%</p> <p>Based on the results of an external review of a sample of complaints files closed between July 2017 and December 2017.</p> <p>A further review of a sample of complaints closed in the second half of the year is currently being undertaken.</p>	85%

Compliance: Timeliness

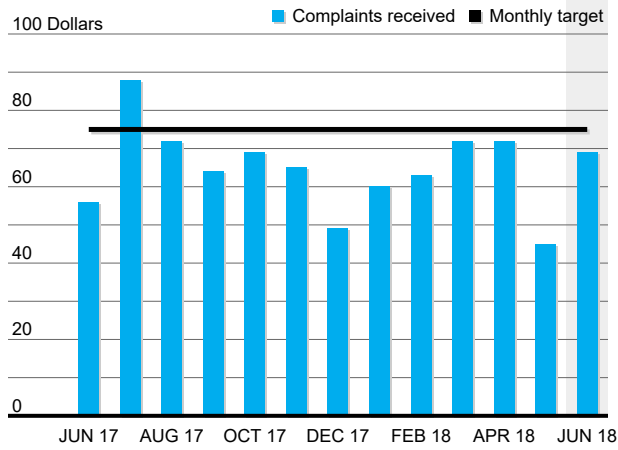
The percentage of open files greater than 6 months old at the year end.	Not achieved - 11%	10%
Review of the operation of Credit Reporting Code completed and actioned.	Review completed with formal reports released in May and June.	Achieved

OFFICE OF THE PRIVACY COMMISSIONER

TREND REPORT - YEAR TO - JUNE 2018

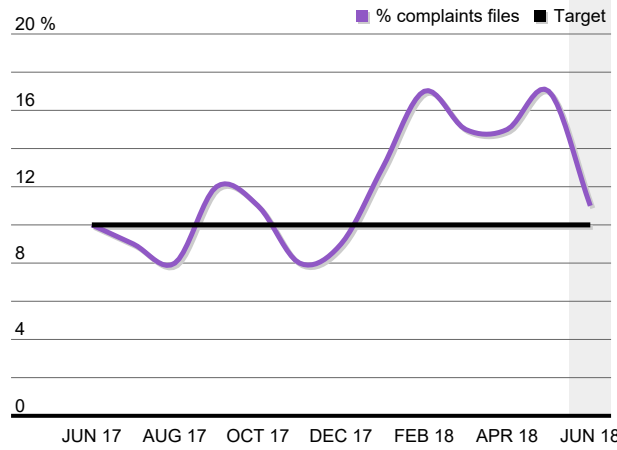
Prepared 19 July 2018

Complaints received



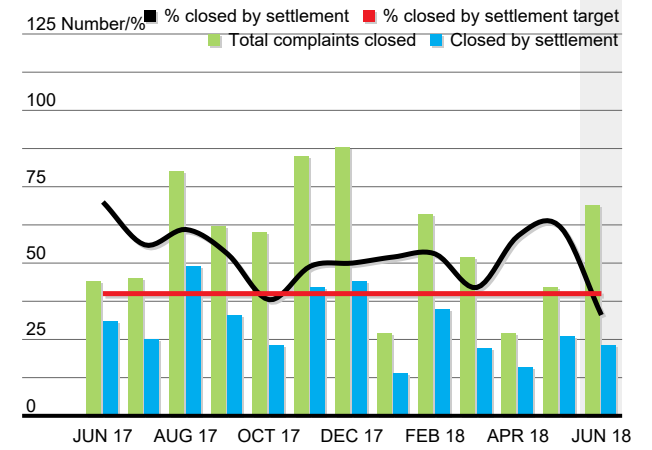
To show the trend in complaints received on a monthly basis across the year.

% complaints greater than 6 mths old



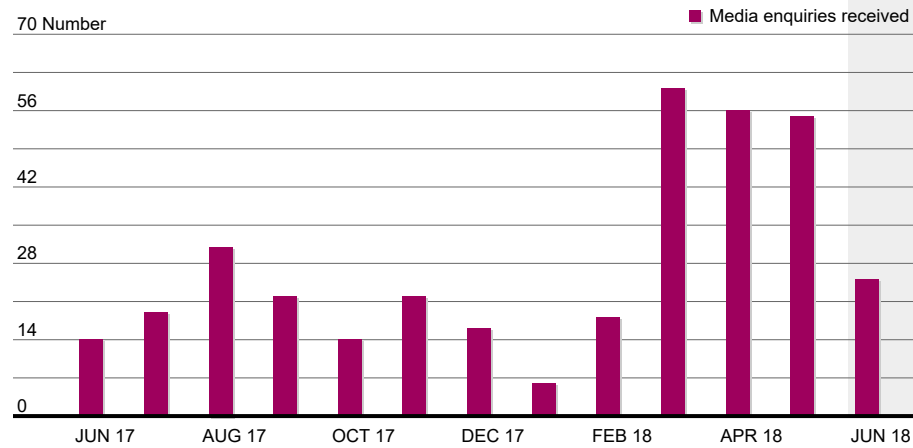
To show the % of complaints work in progress greater than 6 months old against target.

Closure through settlement



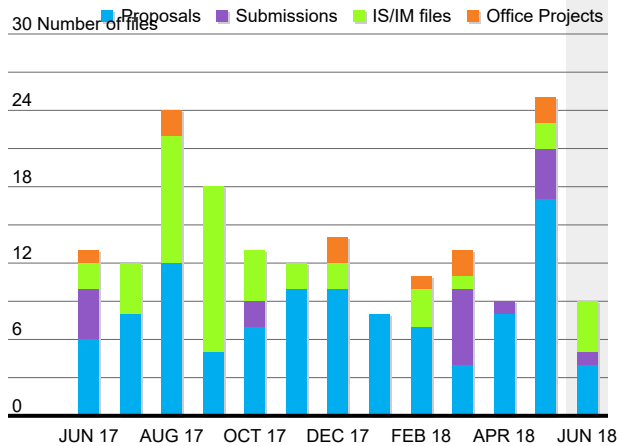
To show the number and % of files closed through settlement between the parties.

Media Enquiries received



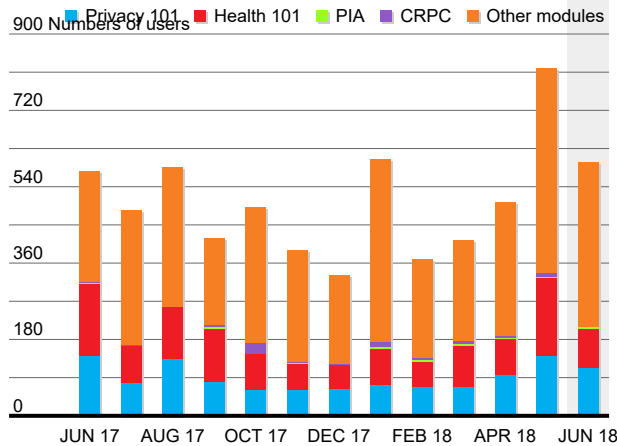
To show the number of media enquiries by month.

Policy files closed by category



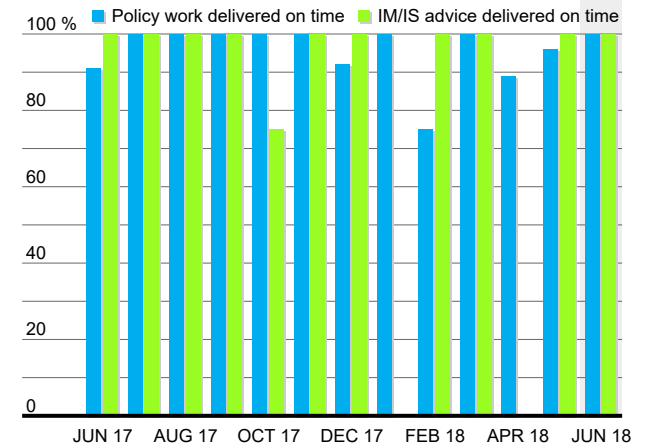
To show the number of policy files that have been completed during the month. The categorisation of these is as per the SPE.

Number of on-line module completions



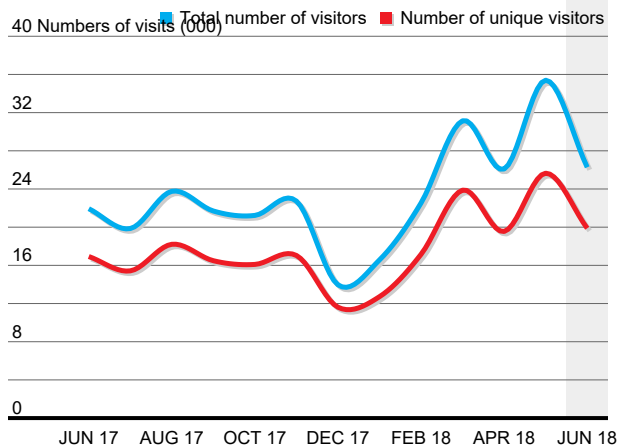
Number of monthly module completions. The "other" category includes AISAs, Employment and Privacy ABC modules and are registered numbers only.

Policy files completed within timeframes



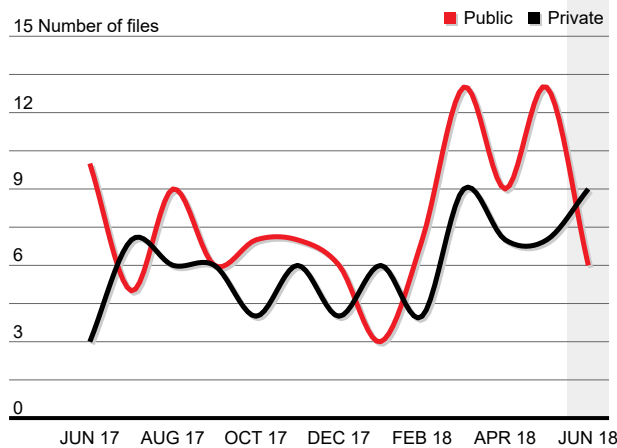
To highlight the timeliness of completion of the Office's policy work. The target (as set in the SPE) is 100%.

Visits to the website



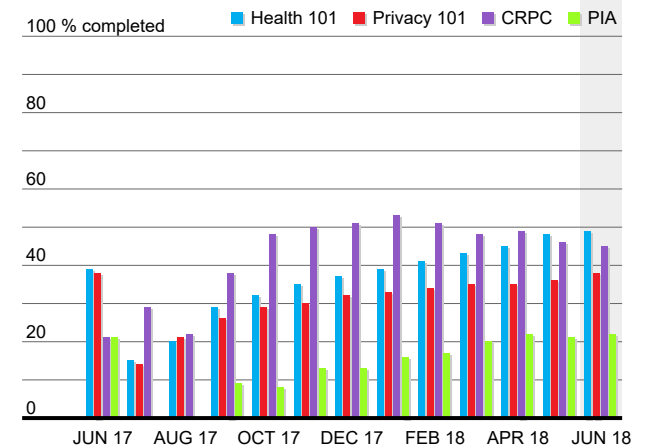
To show the number of visitors to the website on a monthly basis over the past 12 months.

Breach notifications



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

% completion of on-line modules



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