

30 April 2025

Hon Paul Goldsmith
Minister of Justice
Parliament Buildings
WELLINGTON

Dear Minister

QUARTERLY REPORT OF THE PRIVACY COMMISSIONER FOR THE PERIOD 1 JANUARY 2025 TO 31 MARCH 2025

Highlights

Our Inquiry into the trial use of facial recognition technology by Foodstuffs North Island supermarkets is nearing completion. We provided our draft findings to FSNi at the end of March and are awaiting their feedback. We intend to publicly release the findings in the next few months.

Public consultation on the draft Biometrics Processing Privacy Code closed on 14 March. There were approximately 150 submissions, with 100 from members of the public. The remaining submissions were from a broad mix of businesses, government agencies and representative groups. We are currently analysing the submissions to inform any changes needed before issuing the Code later in the year. Supporting guidance documents that were publicly consulted at the same time were very well received and are now being refined.

We have been developing guidance for the upcoming indirect notification obligation (Information Privacy Principle 3A) that will be introduced by the Privacy Amendment Bill. There has been significant interest in this guidance from both the public and private sectors, with approximately 45 agencies wanting to be consulted on this guidance. We will soon undertake targeted engagement with these agencies.

Key operational volumes decreased during this quarter, although these remain at high levels (see Appendix A). For privacy complaints, we expect that 2024/25 will see the highest volumes on record, with the volume of complaints in the year to date (to 31 March 2025) already approaching the total received for the year 30 June 2024. For serious harm privacy breach notifications, there is now a confirmed trend that the majority of these breaches are caused by intentional or malicious activity (such as employee browsing, identity fraud and malicious cyber attacks).

We have developed the programme for Privacy Week 2025, which will be held from 12-16 May with the theme 'Privacy on Purpose'. There will be 20 presentations from both the public and private sectors and with topics including the Privacy Amendment Bill, biometrics, artificial intelligence and information sharing under the Oranga Tamariki Act 1989. The programme for Privacy Week 2025 is available on our website at: <https://www.privacy.org.nz/news/events/privacy-week/>

The passage of the Customer and Product Data Act 2025

On 29 March 2025 the Customer and Product Data Act 2025 received its royal assent. This Act will enhance customers' control through empowering them to authorise businesses to transfer their information to another business in a specified format. The Government has indicated its intention for the banking sector to be the first sector covered by this Act.

We support the introduction of this new regime and the Privacy Commissioner will be the privacy regulator. The new Act is designed to align with and complement the Privacy Act 2020 and the Commissioner's role includes investigating complaints and taking compliance action in relation to privacy related breaches.

Privacy and public trust will be essential to the sharing of customer information and the success of the Customer and Product Data Act. Consequently, we will play a key role in promoting public understanding and trust in the personal information protections supporting the transferal of customer information.

Our implementation plan for the Customer and Product Data Act includes:

- developing guidance relating to personal information flows that will be needed for open banking
- updating our internal processes for dispute resolution and compliance to accommodate the new privacy interferences
- working with the Ministry of Business, Innovation and Employment (MBIE) on other matters to help establish and implement the new regime.

The funding to undertake our role as regulator has not yet been finalised. We have continued to hold discussions with officials from the MBIE on how we could be resourced to undertake our responsibilities as a regulator going forward. We have used this information for drafting our budget for the 2026/27 year and anticipate our activities to be fully funded under a levy regime.

Activities of our Office

Policy

We will shortly publicly consult on minor amendments to schedule 4 of the Telecommunications Information Privacy Code, which provides for the cell phone location information of individuals to be provided to emergency services. The intention of the changes is to ensure that there are no unjustified barriers to use of this location information for search and rescue purposes. In addition, the agency responsible for key information systems has shifted from MBIE to the Next Generations Critical Communications group

hosted by New Zealand Police. Other minor amendments are also necessary to ensure the schedule remains fit for purpose.

The issues in the Government's policy programme we were consulted on in the last quarter included:

- **Retail crime:** potential new offence and liaison with the Ministerial Advisory Group
- **Business:** non-compliant directors: measures to address 'phoenix' companies and better identify disqualified directors who continue to operate businesses
- **Social welfare:** how to use automated decision-making effectively and safely
- **Revenue:** potential models for information sharing to reduce overpayments under 'working for families'
- **Transport:** anti-social road use and road user charges
- **Digital government:** safe use of AI in government and digital identity
- **Social investment:** the potential for the greater use of data under the social investment approach, and developments related to the Integrated Data Infrastructure.

There were no submissions on Bills before Select Committee during this quarter.

Capability and guidance

We also updated our guidance for the tenancy sector following regular questions from both landlords and tenants.

We provided our provisional findings of our review of the Gang Intelligence Centre Approved Information Sharing Agreement (AISA) to the government agencies involved. The responses from these parties will be incorporated into the final report of the review. We have also reviewed and provided feedback on operational protocols for a number of other AISAs, including the Veterans' Affairs AISA and Identity Services AISA.

There were a range of statutory consultations on international and domestic information sharing agreements, including under the Policing Act 2008, Land Transport Act 1998, Integrity Sport and Recreation Act 2023 and the Passports Act 1992

Communication and engagement

During this quarter we began redeveloping our website to better organise our content, archive old information, and improve accessibility and ease of reading. This process is being handled in-house within existing resources to reduce cost.

Media enquiries in this quarter related to issues such as the Inquiry into the Foodstuffs North Island Facial Recognition Trial, a Health NZ privacy breach, Artificial Intelligence (AI), the use of the Auror platform by retailers, and privacy issues related Google Street View and TikTok.

During this quarter we gave 15 speeches and presentations to a variety of organisations and networks. One particularly well received presentation was a 'Privacy 101' from our Guidance and Capability Manager to 100 staff providing social services in South Canterbury.

Compliance and enforcement

The Inquiries by the Public Service Commission into data misuse allegations at Manurewa Marae and by Stats NZ into the potential misuse of 2023 census data have both referred several matters to us for consideration. The package of referrals is complex involving multiple public and private organisations. We are currently reviewing the information provided to us and defining our approach to addressing the multiple matters.

We have issued a draft Compliance Notice to an agency with a demonstrated low privacy maturity and poor information handling practices for very sensitive personal information that have resulted in multiple serious harm to vulnerable individuals.

In December 2021 we issued a Compliance Notice requiring Police to stop unlawfully collecting photographs and biometric prints from members of the public, particularly young people, and to delete unlawfully collected material stored on their systems, including mobile phones. While Police have substantially complied with the compliance notice requirements, during this quarter they formally advised they are unable to complete the final two Notice requirements relating to the deletion of photos. We are now considering our response.

The Public Service Association wrote to the Privacy Commissioner in February 2025, requesting that he launch an investigation into Health New Zealand's proposed cuts to its Data and Digital Directorate (a part of a wider restructuring process). The Commissioner's response noted that he would not be initiating a formal investigation, that OPC continues to have ongoing assurance discussions with Health New Zealand around what is needed to assure the safety and security of sensitive personal information held in various systems. These assurance discussions would remain the focus of our current interactions with Health New Zealand.

Investigations and dispute resolution

Complaint numbers reduced in this reporting period, following the record high volumes for the quarter ending 31 December 2024 (which arose from complaints about Inland Revenue providing hashed information about student loan borrowers to Meta). This spike means that privacy complaints have increased by 29% for the period 1 July to 31 March (in comparison to the same period in 2023/24). We expect this financial year will be the busiest on record.

There is a significant increase in people using AI tools to draft their complaints and enquiries to our Office. This makes our enquiry and complaint investigation processes significantly more difficult as the AI tools are often hallucinating case law or sections of legislation. As a dispute resolution body it is important that we accurately understand how a person has been affected by an action and are finding that increasingly difficult when an AI tool is setting out how someone might have been affected. To mitigate this issue we are putting information on our website asking complainants to outline the impact of a potential privacy breach on them in their own words, rather than with an AI.

The management of organisational risk

As noted last quarter, we have recently reviewed and updated our organisation wide risks and the associated risk management architecture. This review showed that the key risks facing our Office remain the same, with long-term financial sustainability and health, safety and wellbeing of our people continuing to be priorities.

Whilst our cash reserves will enable the budgeted deficit to be funded, the Senior Leadership Team will continue to proactively work at identifying areas of savings whilst remaining mindful of the ability to deliver on both proactive work and reactive core services.

For health, safety and wellbeing we continue to see elevated levels of unreasonable conduct from some members of the public. We are closely monitoring this situation and steps are taken where necessary to ensure the wellbeing of our staff.

In addition to the above, given the limited compliance and enforcement powers that the Office has and increases in breach notifications and complaints, the subsequent risk of regulatory failure also remains a key risk for the Office.

Financial report

We are reporting a deficit of \$82k for the nine months ending 31 March 2025. This is favourable against a budgeted deficit of \$480k. As reported last quarter, the variance against budget is mainly due to decreased staff costs as a result of vacancies due to staff resignations, plus decreases in computer maintenance and network costs. These decreases continue to be offset by increases in specialist services in the policy, guidance and legal areas.

We are currently forecasting a deficit of \$373k for the year to June 2025. This is favourable against the budgeted deficit of \$703k. The Office will be utilising cash reserves to fund this deficit for the current financial year. Further details of financial information and performance against the Statement of Performance Expectations are included as appendices to this report.

Yours sincerely

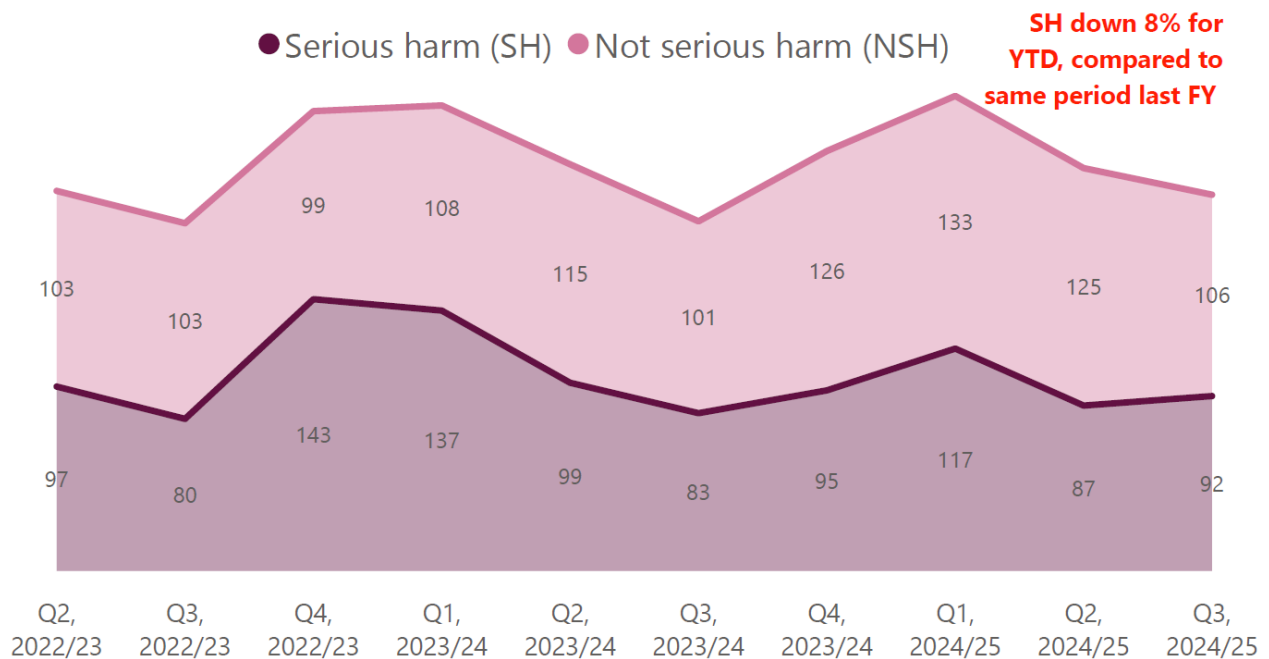


Michael Webster
Privacy Commissioner

Encl:	Appendix A:	Key operational volumes
	Appendix B:	Financials for period ending 30 September 2024
	Appendix C:	Performance against Statement of Performance Expectations - Year to Date

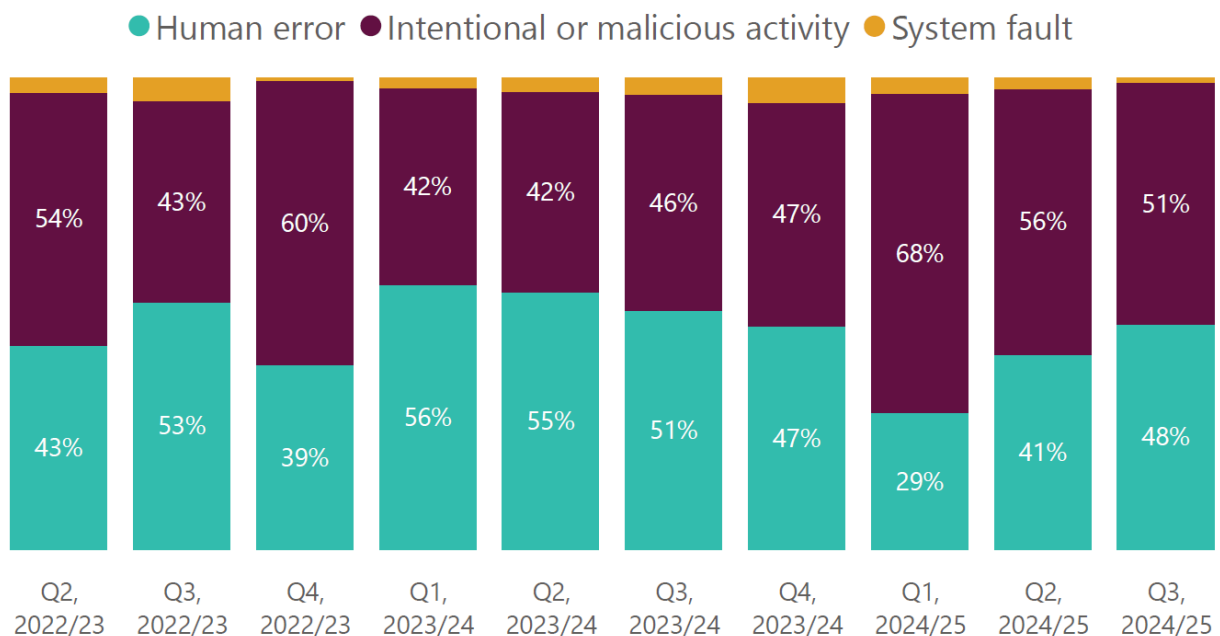
Appendix A: Key operational volumes

Privacy Breach Notifications (from agencies)



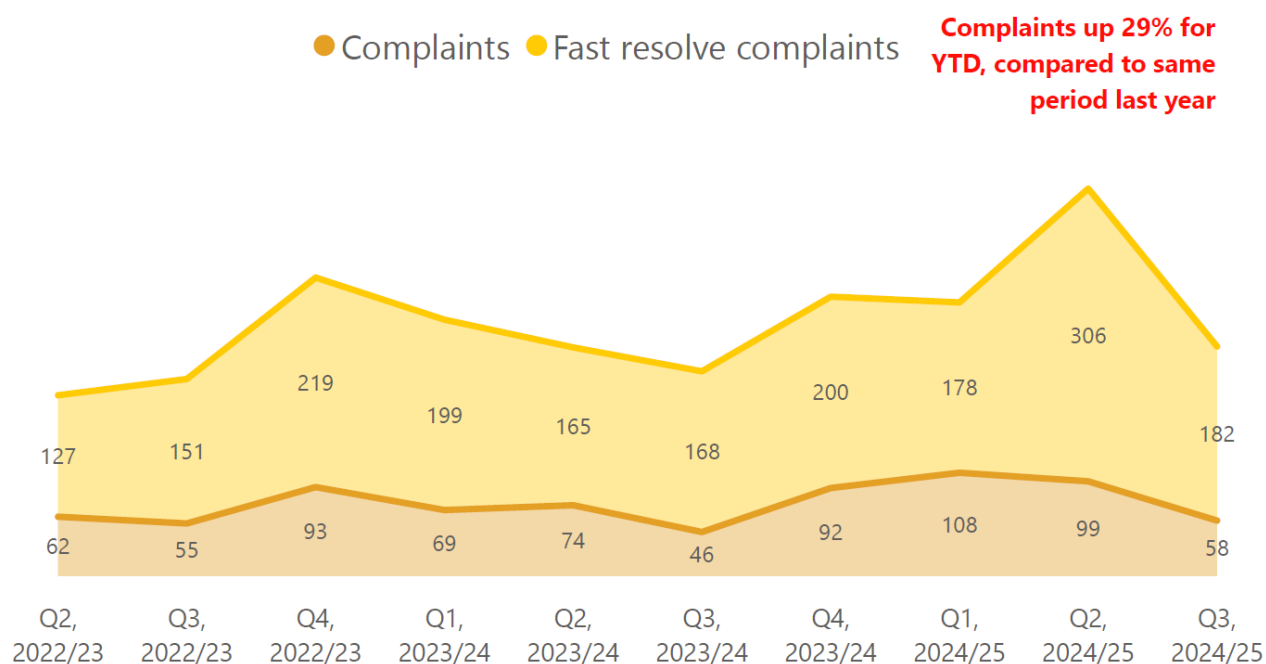
SH Breaches by primary cause

Intentional/Malicious activity is dominant

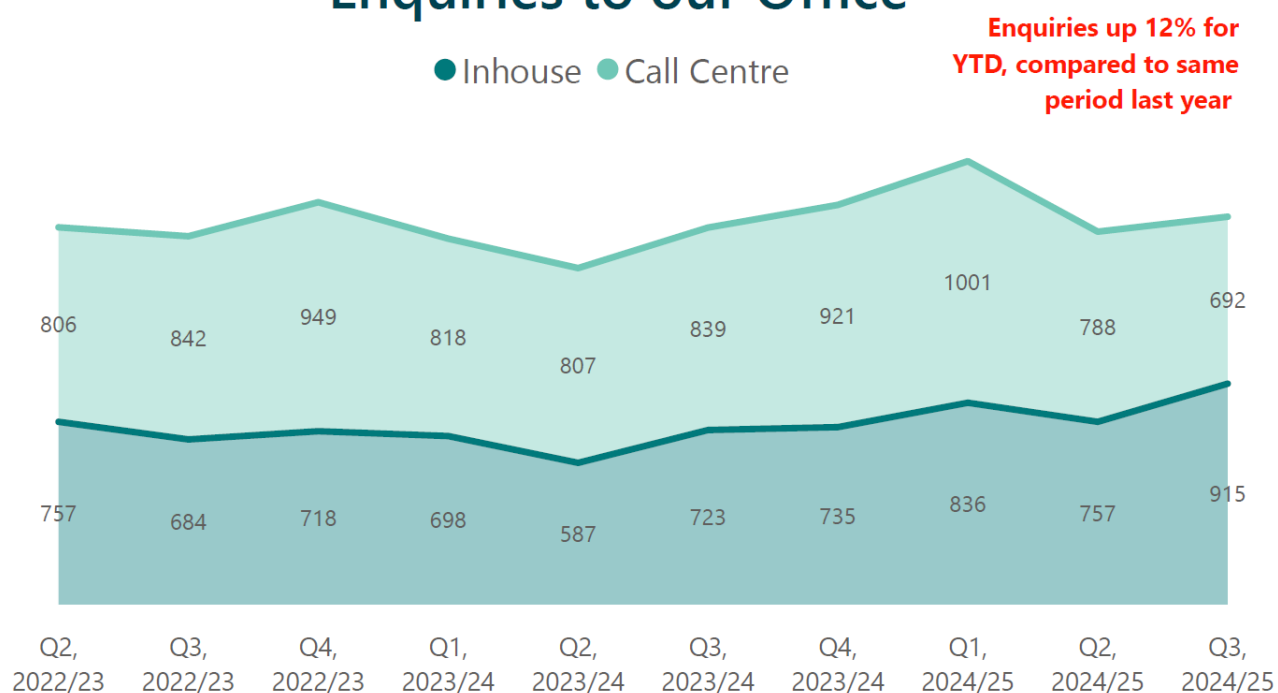


Agencies are required to notify OPC of serious/extreme harm data breaches. A single breach can impact a number of individuals, for example the Latitude Financial data breach impacted over 1 million New Zealanders.

Privacy complaints (from individuals)



Enquiries to our Office



Appendix B: Financials for period ending 31 March 2025

Statement of Comprehensive Income For the 9 Months to 31 March 2025

Prev. Year YTD Actual \$000		Mar 25 YTD Actual \$000	Mar 25 YTD Budget \$000	YTD Var \$000	YTD Var %	Year-End Outlook \$000	Year-End SPE Budget \$000
Revenue							
6,128	Revenue from Crown	5,730	5,730	-	-	7,640	7,640
149	Other Income	116	116	-	-	116	116
87	Interest	67	23	44	191	75	30
6,364	Total revenue	5,913	5,869	44	1	7,831	7,786
Expenditure							
27	Marketing	63	85	(22)	(25)	98	119
0	Audit Fees	0	0	-	-	53	53
154	Depreciation	76	63	13	21	98	85
335	Rental	419	413	6	1	557	551
1,184	Operating	1,032	1,044	12	1	1,483	1,381
4,580	Staff Costs	4,405	4,744	(339)	(7)	5,915	6,300
4,387	Total expenditure	5,995	6,349	(354)	6	8,204	8,489
84	Net surplus / (deficit)	(82)	(480)	398	83	(373)	(703)

Statement of Financial Position As at 31 March 2025

	Mar 25 Actual \$000	Mar 25 Budget \$000	YTD Var \$000	Year-End Outlook \$000	Year-End SPE Budget \$000
ASSETS					
Current Assets					
Cash & Cash Equivalent	4,706	2,031	2,674	2,107	1,808
Debtors and Other Receivables	31	26	5	65	33
Prepayments	82	62	20	128	114
Total Current Assets	4,819	2,119	2,699	2,300	1,955
Current Liabilities					
Creditors and other payables	2,329	115	2,214	164	164
Employee Entitlements	291	270	21	220	270
Total Current Liabilities	2,620	385	2,235	384	434
Working Capital	2,199	1,734	464	1,916	1,521
Non-Current Assets					
Property, Plant and Equipment	156	185	(29)	145	174
Intangible Assets	4	22	(18)	7	23
Total Non-Current Assets	160	207	(47)	152	197
Non-current Liabilities	-	4	(4)	-	4
Net Assets	2,359	1,937	421	2,068	1,714
Public Equity					
Opening Balance	2,441	2,417	23	2,441	2,417
Accumulated Surplus	(82)	(480)	398	(373)	(703)

	Mar 25	Mar 25		Year-End	Year-End
	Actual	Budget	YTD	Outlook	SPE
	\$000	\$000	Var	\$000	Budget
			\$000		\$000
Total Public Equity	2,359	1,937	421	2,068	1,714

Statement of Cash Flows
As at 31 March 2025

	Mar 25	Mar 25	Year-End	Year-End
	Actual	Budget	Outlook	SPE
	\$000	\$000	\$000	Forecast
				\$000
Cash Flows from Operating Activities				
<i>Cash was Provided from:</i>				
Government Grant	7,926	5,730	7,640	7,640
Other Income	116	116	116	116
Interest	67	23	75	30
	8,109	3,869	7,831	7,786
<i>Cash was Applied to:</i>				
Payments to Suppliers	1,612	1,501	2,305	2,065
Payments to Employees	4,384	4,727	5,965	6,282
Payments of GST	(31)	(38)	3	(30)
	5,965	6,190	8,273	8,317
Net Cash Flow applied to Operating Activities	2,144	(321)	(442)	(531)
Cash Flows from Investment Activities				
Cash was applied to				-
Purchase of Fixed Assets	12	37	25	50
<i>Net Cash flows applied to Investing Activities</i>	(12)	(37)	(25)	(50)
Cash was Provided from:				
Sale of Fixed Assets	-	-	-	-
Net Cash Flow from Investment Activities	(12)	(37)	(25)	(50)
Net Increase/(Decrease) in Cash Held	2,132	(358)	(467)	(581)
Cash brought forward	2,574	2,389	2,574	2,389
Closing cash carried forward	4,706	2,031	2,107	1,808
Cash made up of:				
Cash on hand	-	-	-	-
National Bank - Cheque	2,282	1,031	1,107	1,808
National Bank - Deposit	2,424	1,000	1,000	1,000
	4,706	2,031	2,107	1,808

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

Output 1 – Strategy and Insights

Measure	Achieved As at 31 March	Expectation As at 31 Mar (as per SPE)
Conduct 2 assessments a year to gauge the privacy maturity or attitudes of agencies or individuals.	On track – to be reported on at year-end.	2

Output 2 – Communication and Education

Measure	Achieved As at 31 March	Expectation As at 31 Mar (as per SPE)
Education module completions as a percentage of education module registrations in the year.	84%	75%
Respond to all enquiries within 5 working days.	94%	95%
Content improvements made to digital service channels.	On track A new information architecture (menu options) was agreed. A detailed workplan has been developed and the team have currently completed 787 of approximately 1,500 tasks including unpublishing, moving content and rewriting information on the website.	Achieved

Output 3 – Compliance and Enforcement

Measure	Achieved As at 31 March	Expectation As at 31 Mar (as per SPE)
Notified privacy breaches that are likely to cause serious harm, are followed up with the notifying agency within 10 working days of risk assessment.	91%	85%

Measure	Achieved As at 31 March	Expectation As at 31 Mar (as per SPE)
The percentage of externally reviewed compliance investigations that are rated as 3.5 out of 5 or better for quality.	Measured at year-end.	85%
Incoming compliance issues are risk assessed to determinate the appropriate response activity.	98%	90%

Output 4 – Policy and Advocacy

Measure	Achieved As at 31 March	Expectation As at 31 Mar (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%
Undertake 2 projects relevant to setting privacy standards, expectations or guidance in the privacy system.	On track – to be reported on at year-end.	Achieved
All externally reviewed policy files appropriately incorporate Treaty and Te Ao Māori analysis as necessary.	Measured at year-end.	85%

Output 5 – Investigations and Dispute Resolution

Measure	Achieved As at 31 March	Expectation As at 31 Mar (as per SPE)
The percentage of notified complaints files closed by settlement between the parties.	67%	50%
The percentage of externally reviewed complaints investigations that are rated as 3.5 out of 5 or better for quality.	Measured at year end.	85%
The percentage of complaints closed during the year that were less than 6 months old at closure.	85%	85%