

EXHIBIT 19

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FOIL CONFIDENTIAL TREATMENT REQUESTED¹

July 13, 2021

By Email

Abisola Fatade
Assistant Attorney General
Records Access Officer
28 Liberty Street, New York, NY 10005
Abisole.Fatade@ag.ny.gov

Re: Response to NY AG Freedom of Information Law Request No. G000261-2021

Dear Abisola:

I write on behalf of iFinex Inc., BFXNA Inc., BFXWW Inc. (collectively, “Bitfinex”), and Tether Holdings Limited, Tether Operations Limited, Tether Limited, and Tether International Limited (collectively, “Tether”) (collectively together, “the Companies”) in response to your letter dated June 29, 2021 regarding NY AG Freedom of Information Law Request No. G000261-2021. In your letter you stated that the New York State Attorney General’s Office (“OAG”) had received a Freedom of Information Law (“FOIL”) request for materials produced by the Companies to OAG pursuant to an ongoing settlement agreement with the OAG with an effective date of February 18, 2021 (the “Settlement Agreement”). In both your letter and subsequent email correspondence you identified several records that are allegedly responsive to the FOIL request (“Requested Records”). You explained that, in accordance with applicable FOIL laws, the Requested Records may be releasable to the requesting party unless specific exemptions apply.

¹ This letter, its exhibits and attachments, and the information contained therein (together, the “Materials”) contain confidential and proprietary commercial and financial information concerning iFinex, Inc. and its affiliates (“iFinex”), and Tether Limited and its affiliates (“Tether”), within the meaning of the Freedom of Information Law (“FOIL”), N.Y. Pub. Off. Law §§ 84-90. Accordingly, iFinex and Tether hereby request that the Materials, their contents, and their existence be accorded confidential, non-public treatment under FOIL and not be disclosed in response to any request made under FOIL. § 87(2). The foregoing request also applies to any transcripts, notes, memoranda, tapes, or other materials of any sort that are made by, or at the request of, the New York Attorney General and incorporate, refer to, or relate to the Materials or any of the matters contained therein.

If the Materials, their existence, or their contents become the subject of a FOIL request, please contact me, and we will provide further information in support of Bitfinex and Tether’s request for confidential treatment.

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Furthermore, you instructed the Companies to provide a written statement of the necessity of granting the exemption, and instructed the Companies to identify each document or portion thereof subject to an exemption from disclosure, and to provide a detailed explanation of the basis for the asserted exemption. This letter identifies the Requested Records or portions thereof that should be withheld from disclosure.

Pursuant to NY Pub. Off. Law §§ 87(2)(b), (d), and (e), Bitfinex and Tether wish to protect their trade secrets, commercial information, and the personal information of Bitfinex and Tether personnel and third parties that were submitted pursuant to the Settlement Agreement with OAG and on a voluntary basis. The Companies further wish to protect information submitted as part of an OAG investigation and as part of the Companies' ongoing obligations pursuant to the Settlement Agreement.

For the reasons explained more fully below, Bitfinex and Tether respectfully request that OAG withhold from disclosure the documents and information identified in Section I, below.

I. Identification of Information to be Withheld

As explained in detail in Section III, below, all requested records are exempt under § 87(2)(e) as records compiled pursuant to a law enforcement investigation that remains ongoing under the Settlement Agreement. In the alternative, the bullets below and the attachments to this letter identify the Requested Records or portions thereof that should be withheld under §§ 87(2)(b), (d), and (e). This information has been identified in yellow highlighting in Attachments I-III, and in final redacted form in Attachments IV-VI, and consists of the following:

- **2021.05.19 – Quarterly Report Under Settlement.** This document is a letter from Bitfinex and Tether to OAG pursuant to the Settlement Agreement. This letter and its exhibits and attachments should be withheld in full under § 87(2)(e) as it reveals OAG's methodology and approach in their investigation. If it is not withheld in full, however, the following sections should be redacted:
- **Section I. Measures to Prohibit New York Customers (pp. 2-3).** This section describes Bitfinex and Tether's internal policies regarding the removal of customers determined to have a U.S. nexus in violation of the Companies' terms of service, including the specific steps taken by Bitfinex and Tether to identify and investigate suspicious customers and other customer compliance violations, and the bases for customer termination. Bitfinex and Tether customarily and actually treat this information as secret because competitors could use this information to copy the Companies' compliance policy, thus causing substantial competitive injury to Bitfinex and Tether. Moreover, bad actors could use the information in these documents to learn what to do to avoid the Companies' compliance processes, thus damaging Bitfinex and Tether's ability to maintain effective compliance policies as compared to those of its competitors. Further still, disclosure of this document could potentially defeat the OAG's and the Companies' shared objectives under the

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Settlement Agreement, which are, in part, to keep New York users *off* the Companies' platform. For these reasons, and as explained in more detail below, we request that this section be redacted under §§ 87(2)(d) and (e).

- ***Section IV. Transfers of Funds Between Bitfinex and Tether (p. 4) and Exhibit B – Q1 Transfers of Funds Between Bitfinex and Tether.*** Section IV and Exhibit B describe one of Tether's banking relationships and internal Tether transactions and costs. Tether customarily and actually treats this information as secret because disclosure of the information would provide detailed data to Tether's competitors regarding Tether's costs and profitability. For these reasons, and as explained in more detail below, we request that this section and Exhibit B be redacted under §§ 87(2)(d), and (e).
- ***Exhibit A – Assets Backing USDT as of March 31, 2021 (p. 5).*** Exhibit A identifies all of Tether's financial accounts and the value of the assets held in each account. Tether customarily and actually treats this information as secret because disclosure of such documents and information would irreparably harm Tether's banking relationships by revealing the allocation of assets between Tether's various banks, all of whom compete with one another, and all of which is highly sensitive competitive information kept secret from competitors vying to achieve the same reliable banking relationships that Tether has painstakingly taken years to cultivate. Moreover, disclosure of this information would provide detailed and highly confidential information to Tether's competitors regarding the Companies' expected profitability and asset allocation. For these reasons, and as explained in more detail below, we request that Exhibit A be redacted under §§ 87(2)(d), and (e).
- ***2021.06.04 – Letter to OAG.*** This document is a letter from Bitfinex and Tether to OAG voluntarily providing information requested by OAG. This letter and its exhibits and attachments should be withheld in full under § 87(2)(e) as it reveals OAG's methodology and approach in their investigation. If it is not withheld in full, however, the following sections should be redacted:
 - ***Section I. Measures to Prohibit New York Customers (p. 2).*** This section contains information regarding the staffing for Bitfinex and Tether's compliance functions, and information regarding how customers with a U.S. nexus are detected and terminated. Bitfinex and Tether customarily and actually treat this information as secret. For the reasons described in bullet 2, "Section I. Measures to Prohibit New York Customers (pp. 2-3)," and as explained in more detail below, we request that this section be redacted under §§ 87(2)(d) and (e).
 - ***Section IV. Account Segregation (pp. 3-4).*** This section contains information regarding Bitfinex and Tether's banking partners and the manner in which transactions are processed by Bitfinex and Tether. Bitfinex and Tether customarily

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and actually treat this information as secret. For the reasons described in bullet 3, “Exhibit A – Assets Backing USDT as of March 31, 2021 (p. 5),” and as explained in more detail below, we request that this section be redacted under §§ 87(2)(d) and (e).

- ***Exhibit A – Assets Backing USDT as of March 31, 2021 (pp. 6-7).*** Exhibit A identifies all of Tether’s financial accounts, the value of the assets held in each account, and a detailed breakdown of the asset classes contained in each account. Tether customarily and actually treats this information as secret. For the reasons described in bullet 3, “Exhibit A – Assets Backing USDT as of March 31, 2021 (p. 5),” and as explained in more detail below, we request that Exhibit A be redacted under §§ 87(2)(d) and (e).
- ***Attachment 1 - Account On-Hold & Termination Procedure and Attachment 2 – Tether AML Program.*** These documents are Bitfinex and Tether’s internal compliance policies regarding Bitfinex’s account on-hold and termination procedures, and Tether’s anti-money laundering program. These policies contain the specific steps taken by Bitfinex and Tether to identify and investigate suspicious customers and other customer compliance violations, and the bases for customer termination. Bitfinex and Tether customarily and actually treat this information as secret because competitors could use this information to copy the Companies’ compliance policies, thus causing substantial competitive injury to Bitfinex and Tether. Moreover, bad actors could use the information in these documents to learn what to do to avoid the Companies’ compliance processes, thus damaging Bitfinex and Tether’s ability to maintain effective compliance policies as compared to those of its competitors. Further still, disclosure of this document could potentially defeat the OAG’s and the Companies’ shared objectives under the Settlement Agreement, which are, in part, to keep New York users off the Companies’ platform. For these reasons, and as explained in more detail below, we request that these documents be withheld in full under §§ 87(2)(d) and (e).
- ***Attachment 3 – Bitfinex Terminated Accounts and Attachment 4 – Tether Terminated Accounts.*** These documents contain a compilation of prior customers terminated from Bitfinex and Tether under the Companies’ terms of service, which prohibit U.S. customers, and were created in response to a request from OAG under the Settlement Agreement. Bitfinex and Tether customarily and actually keep this data secret. These customer lists provide a cross-section of the Companies’ former customers that, if disclosed, could be used by Bitfinex and Tether’s competitors to solicit those former customers, and to gain a competitively advantageous understanding of the nature of Bitfinex and Tether’s customer base. Moreover, because these documents contain only customers terminated due to a U.S. nexus, such information further provides competitors practical information regarding the Companies’ compliance program and the types of customers that program demands terminated. Further still, disclosure of such information would constitute an unwarranted invasion

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- of privacy to those former customers who had a reasonable expectation that their private information would not be made public. Finally, disclosure of this document could potentially defeat the OAG's and the Companies' shared objectives under the Settlement Agreement, which are, in part, to keep New York users *off* the Companies' platform, because such customer termination lists would provide a roadmap to bad actors as to which customers were identified by the Companies as having an impermissible U.S. nexus. For these reasons, and as explained in more detail below, we request that these documents be withheld in full under §§ 87(2)(b), (d), and (e).
- ***Attachment 5 – Tether Lending.*** This document is a compilation of internal data from Tether's lending program, including the date of each loan, the number of active loans under the program, the size of the loans, and the size and type of collateral used to collateralize each loan, and was voluntarily created and produced by Tether in response to a request by OAG under the Settlement Agreement. Tether customarily and actually treats this information as secret. These data constitute Tether's most sensitive financial information, as it contains the allocation and type of Tether's assets, upon which Tether's profitability and competitive advantage relies. Disclosure of this information would reveal to Tether's competitors Tether's internal investment, cost, and profitability strategy. Moreover, because such data includes the size, date, and currency of specific blockchain transactions, such transactions are traceable to specific Tether customers, thus revealing to Tether's competitors an otherwise secret cross-section of Tether's customers. Because this document can be used to identify specific Tether customers, it would also constitute an unwarranted invasion of privacy to those current customers who have a reasonable expectation that their private information will not be made public. For these reasons, and as explained in more detail below, we request that this document be withheld in full under §§ 87(2)(b), (d), and (e).
 - ***2021.06.25 – Letter to OAG.*** This document is a letter from Bitfinex and Tether to OAG voluntarily providing information requested by OAG. This letter and its exhibits and attachments should be withheld in full under § 87(2)(e) as it reveals OAG's methodology and approach in their investigation. If it is not withheld in full, however, the following sections should be redacted:
 - ***Section I. Commercial Paper and Reverse Repos, ¶¶ 3-6 and Bullets 1-3 (pp. 2-3); and Section III. [REDACTED] (p. 3).*** These paragraphs and bullets contain the names of Tether's banking partners, the valuation methods for Tether's assets, and Tether's internal cost and investment data. Tether customarily and actually treats this information as secret. Disclosure of this information would cause substantial competitive injury to Tether because Tether's competitors are vying to achieve the same reliable banking relationships that Tether has painstakingly taken years to cultivate, and thus revealing such information would allow Tether's competitors to freeride on Tether's efforts. For these reasons, the reasons described in bullet 3, "Exhibit A – Assets Backing USDT as of March

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31, 2021 (p. 5),” and as explained in more detail below, we request that these paragraphs, bullets, and section be redacted under §§ 87(2)(d) and (e).

- ***Section IV. Miscellaneous, Bullet 1 (p. 4).*** This bullet contains the name of Tether’s Chief Investment Officer (CIO). Revealing the CIO’s name would constitute an unwarranted invasion of privacy and should be redacted on that basis. For this reason, and as explained in more detail below, we request that this bullet be redacted under §§ 87(2)(b) and (e).
- ***Section IV. Miscellaneous, Bullets 2-4 (p. 4).*** These bullets contain the names of Tether’s asset storage partners. Tether customarily and actually treats this information as secret. Revealing the names of these partners would cause substantial injury to Tether’s competitive position by providing Tether’s competitors with secret information regarding Tether’s asset allocation and internal costs, both of which are the foundation of Tether’s profitability and success. For this reason, and as explained in more detail below, we request that these bullets be redacted under §§ 87(2)(d) and (e).
- ***Exhibit A – Tether Lending Collateral Wallet Addresses.*** Exhibit A contains the wallet addresses at which Tether stores collateral under its lending program. Tether customarily and actually treats this information as secret. Disclosing these wallet addresses would cause substantial damage to Tether’s competitive position by revealing the specific collateral used in the lending program, thus giving Tether’s competitors a blueprint of how to copy Tether’s lending program. For this reason, and as explained in more detail below, we request that Exhibit A be redacted under §§ 87(2)(d) and (e).
- ***Attachment A, Attachment B, Attachment C, BFX-THR_NYAG1304139, and BFX-THR_NYAG1304140.*** Attachments A-C are portfolio reports from three of Tether’s banks detailing the size and composition of Tether’s assets and Tether’s investment strategy. BFX-THR_NYAG1304139 and BFX-THR_NYAG1304140 are lists of Tether’s specific commercial paper investments. These documents were produced to OAG pursuant to the Settlement Agreement. Tether customarily and actually treats this information as secret. These documents contain Tether’s profitability strategy, including the non-public names of Tether’s banking partners, and highly detailed information regarding Tether’s investments, including specific investment vehicles, maturity dates, interest rates, and other data. Disclosure of such documents and information would irreparably harm Tether’s banking relationships by revealing the allocation of assets between Tether’s various banks, all of whom compete with one another, and all of which is highly sensitive competitive information kept secret from competitors vying to achieve the same reliable banking relationships that Tether has painstakingly taken years to cultivate. Moreover, disclosure of these documents would provide detailed and highly confidential information to Tether’s competitors regarding the Companies’ expected profitability and asset allocation. For these reasons, and as

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explained in more detail below, we request that these documents be withheld in full under §§ 87(2)(d), and (e).

II. Background

Bitfinex is among the world's largest virtual currency exchanges, and its affiliated business, Tether, issues the "stablecoin" tether, which is used as a medium of exchange to buy and sell other virtual currencies. Both Bitfinex and Tether operate in highly competitive environments with hundreds of competing exchanges² and stablecoins.³ As a nascent but nonetheless ruthlessly competitive market, all such competitors are vying for similar customers, working to establish cost effective and efficacious compliance protocols in a rapidly changing environment, and vying to establish crucial banking relationships and investment strategies to maximize their profitability and competitive advantage and offer reliable services to customers.

In the course of responding to document requests by OAG, and in part pursuant to the Settlement Agreement, the Companies voluntarily provided detailed information relating to, among other things, their banking relationships, investment and lending strategies, internal

² See, e.g., Sergio Zammit, *How Many Cryptocurrency Exchanges are there?*, Cryptimi (Apr. 1, 2021), <https://www.cryptimi.com/guides/how-many-cryptocurrency-exchanges-are-there> (estimating there are 504 cryptocurrency exchanges, including 259 that are tracked on CoinMarket Cap and many others that are in start-up periods); Alexander Osipovich, *Upstart Peer-to-Peer Crypto Exchanges Take Aim at Coinbase*, WALL STREET JOURNAL (May 24, 2021), <https://www.wsj.com/articles/upstart-peer-to-peer-crypto-exchanges-take-aim-at-coinbase-11621848601> (discussing new competition from peer-to-peer crypto exchange networks, which pose "a potential business risk" to conventional crypto exchanges, such as Bitfinex); Carla Mozee, *Coinbase could slump to \$100 as competition eats into market share of the largest US crypto exchange, New Constructs CEO says*, BUSINESS INSIDER (May 12, 2021), <https://markets.businessinsider.com/currencies/news/coinbase-stock-price-lq-earnings-valuation-competition-new-constructs-2021-5>.

³ See, e.g., CB INSIGHTS, *WHAT ARE STABLECOINS?* (Feb. 16, 2021), <https://www.cbinsights.com/research/report/what-are-stablecoins/> (discussing the recent "stablecoin invasion" from the release and development of "at least 200 stablecoins," including "many new fiat-collateralized [that] have risen up in an attempt to take Tether's place," one of which is "steadily chipping away at Tether's hold on stablecoin market share"); Tom Lydon, *A Different Type of Currency: The Growing World of Stablecoins*, ETF TRENDS (June 14, 2021), <https://www.etftrends.com/disruptive-technology-channel/different-type-of-currency-world-of-stablecoins/> (discussing the creation of new stablecoins with support from "big name investors," such as Fidelity, and suggesting Tether's "grip on stablecoin dominance may be slipping"); *A Complete List Of Stablecoins*, 101 Blockchains (May 31, 2021), <https://101blockchains.com/list-of-stablecoins/> (noting there are "almost 200 stablecoins presently in the stablecoin ecosystem"); Helen Partz, *Stablecoin reserves on crypto exchanges hit new historic high of \$10B*, COINTELEGRAPH (Mar. 29, 2021), <https://coingecko.com/news/stablecoin-reserves-on-crypto-exchanges-hit-new-historic-high-of-10b> (discussing "payment giant Visa[s]" pilot program with a Tether competitor before adding, "Since last year, stablecoin market was mostly dominated by Tether, but now the market is evenly shared with other stablecoins like USDC, BUSD, HUSD, and etc."); Joanna Ossigner, *Rise of Crypto Market's Quiet Giants Has Big Market Implications*, Bloomberg (Mar. 19, 2021, 7:40 AM), <https://www.bloomberg.com/news/articles/2021-03-19/rise-of-crypto-market-s-quiet-giants-has-big-market-implications> (noting the "[t]he rapid rise of stablecoins over the past five years").

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compliance protocols and controls, and lists of prior customers. Document production obligations remain ongoing pursuant to the Settlement Agreement.

III. Argument

A. Legal Standard

Although the Freedom of Information Law permits access to agency records, “the public’s right to obtain information and access the inner workings of the State government is not unfettered.” *James, Hoyer, Newcomer, Smiljanich & Yanchunis, P.A. v. State, Off. of Atty. Gen.*, 27 Misc.3d 1223(A), 7 (Sup. Ct. 2010). Pub. Off. Law § 87(2) permits OAG to deny access to records or portions of records that meet one or more statutory exemptions identified in Pub. Off. Law § 87(2). Those exemptions include, among others, withholding records that:

“(b) if disclosed would constitute an unwarranted invasion of personal privacy”

“(d) are trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise;” or

“(e) are compiled for law enforcement purposes and which, if disclosed, would . . . interfere with law enforcement investigations or judicial proceedings.”

Pub. Off. Law §§ 87(2)(b), (d), (e).

Because many of the exemptions under FOIL are patterned after counterparts in the federal Freedom of Information Act, or FOIA, New York courts frequently look to corresponding federal caselaw for guidance. *See, e.g., Encore Coll. Bookstores, Inc. v. Auxiliary Serv. Corp. of State Univ. of New York at Farmingdale*, 87 N.Y.2d 410, 420 (Ct. App. Dec. 27, 1995) (citing comparable federal caselaw as relating to Pub. Off. Law § 87(2)(d), and stating, “we adopt [the analogous Federal standard] as the test for determining whether ‘substantial injury to the competitive position of the subject enterprise’ would ensue from disclosure of commercial information under FOIL”); *Pittari v. Pirro*, 258 A.D.2d 202, 696 (2d Dep’t 1999) (quoting *Matter of Fink v. Lefkowitz*, 47 N.Y.2d 567, 572 (1979)) (internal quotation marks omitted) (“[A]n examination of the Federal case law is instructive as [t]he legislative history of the Freedom of Information Law indicates that many of its provisions, including [§ 87(2)(e)], were patterned after the Federal analogue.”); *Verizon New York Inc. v. New York State Pub. Serv. Comm’n*, 46 Misc.3d 858, 868 (Sup. Ct. 2014) (citing to federal caselaw in its analysis of § 87(2)(d)’s trade secret exemption).

As our proposed redactions to the responsive records reflect, all or a portion of the Requested Records fall within one or more of these exemptions, and therefore should not be disclosed for the reasons discussed below.

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B. All Requested Records Should Be Withheld Under Pub. Off. Law § 87(2)(e) Because They are Exempt Law Enforcement Investigation Materials.

All Requested Records should be withheld because they are exempt law enforcement investigation materials. Pub. Off. Law § 87(2)(e)(i) exempts from disclosure records that “are compiled for law enforcement purposes and which, if disclosed, would ... interfere with law enforcement investigations or judicial proceedings.” “This provision broadly permits an agency to make ‘a generic determination’ that disclosure of a record would interfere with a judicial proceeding against a particular individual.” *New York Times Co. v. New York State Exec. Chamber*, 57 Misc.3d 405, 411(N.Y. Sup. Ct. 2017); *see Elec. Priv. Info. Ctr. v. United States Drug Enf’t Agency*, 401 F.Supp.3d 37, 45 (D.D.C. 2019) (exempting, under 5 U.S.C.A. § 552(b)(7)(E), FOIA’s equivalent exemption, records related to program that collected phone data as part of an effort to combat drug activity and commenting that “Exemption 7(E) sets a ‘relatively low bar’ for an agency to justify withholding information”); *Marcusse v. U.S. Dept. of Just. Off. of Info. Pol’y*, 959 F. Supp. 2d 130, 112 (D.D.C. 2013) (exempting publicly available data collected and provided to the FBI by a vendor under 5 U.S.C.A. § 552(b)(7)(E) because the information was organized and reported to the FBI in a non-public manner developed by the vendor to meet the FBI’s investigative needs).

OAG investigations qualify as a relevant law enforcement investigation under § 87(2)(e). *James*, 27 Misc.3d at 8-10. Where a settlement agreement with OAG requires the continued production of documents, the investigation is ongoing. *See Id.* at 9 (“Under the Assurance settlement, SLM was required to cooperate in the continuing student loan investigation. SLM agreed to produce, voluntarily and without service of subpoenas, any information and all documents related to student loans reasonably requested by the OAG To reiterate, the investigation remains ongoing.”). An investigation need not be ongoing, however, for § 87(2)(e) to apply; the potential for future prospective investigations is sufficient. *Id.* at 9; *see Madeiros v. New York State Educ. Dep’t*, 30 N.Y.3d 67, 78 (Ct. App. Oct. 17, 2017) (“We have previously recognized that section 87(2)(e)(i) applies to prospective investigations”).

James is instructive here. In that case, OAG sought documents from a student loan lender via demand letters and subpoenas. In response, the lender produced documents voluntarily, and later entered into a settlement with OAG which resulted in subsequent post-settlement document productions. Following receipt of a FOIL request, the lender argued that all produced documents were compiled for law enforcement purposes, and OAG would not have the documents but for the investigation. 27 Misc.3d 1223(A) at 6.

The court explained that disclosure of the documents withheld by OAG would interfere with an ongoing OAG investigation and would reveal the specific documents and subjects that OAG was interested in and OAG’s methodology and approach in the investigation. *Id.* at 9. Moreover, the court noted that other current or potential future targets of OAG’s student loan investigation could “utilize information gleaned from the OAG’s letter requests and subpoenas to tailor their future activities so as to avoid having to reveal improper conduct in this investigation or to

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otherwise avoid detection or prosecution for illegal conduct.” *Id.* The court further noted that even though the lender had settled with OAG, the settlement agreement included continuing obligations by the lender, including document and information productions requested by OAG, meaning “the investigation remain[ed] ongoing.” *Id.* The court withheld the documents under § 87(2)(e)(i). *Id.*

The analysis set forth by the *James* court applies with equal force here. Just as in *James*, all Requested Records were compiled in the course of an OAG investigation, and OAG would not have those records but for Bitfinex and Tether’s production of documents and information to OAG. Likewise, just as the investigation in *James* remained ongoing because the lender had continuing obligations to OAG, Bitfinex and Tether continue to produce documents voluntarily to assist in OAG’s investigation and pursuant to its settlement agreement with OAG, which contains continuing document production obligations by Bitfinex and Tether to OAG.

Moreover, like the organized and non-public data exempted in *Marcusse* under the related FOIA provision, all Requested Records here contain information compiled specifically to respond to OAG’s investigative concerns, including highly specific and non-public information relating to Bitfinex and Tether’s internal compliance programs, finances and banking, and customer information. This is the precise concern that animated the withholding of documents in *James* – that disclosure would “reveal the specific documents and subjects that OAG was, and remains, particularly interested in and the OAG’s methodology and approach in the investigation.” *James*, 27 Misc.3d at 9.

These concerns are not academic. As OAG’s continued focus⁴ on cryptocurrency companies like Bitfinex and Tether make clear, revealing the OAG’s document requests and methodology risks providing a roadmap to “potential future targets” of OAG’s cryptocurrency enforcement efforts seeking to evade OAG enforcement. While the Companies’ obligations under the Settlement Agreement remain ongoing, these same concerns apply even after the conclusion of Bitfinex and Tether’s obligations under the Settlement Agreement. Accordingly, providing any of the Requested Records under the FOIL request in this case could potentially jeopardize the OAG’s prerogatives and investigations in future cases.

For the reasons stated above, OAG should withhold all Requested Records under § 87(2)(e).

⁴ See, e.g., Press Release, N.Y. Off. of the Att’y Gen., Att’y Gen. James Secures Appointment of Court Receiver to Protect Inv’rs.’ Money During Lawsuit (June 7, 2021); Press Release, N.Y. Off. of the Att’y Gen., Att’y Gen. James Seeks Court Order Immediately Halting Continued Fraud by Illegal Virtual Currency Trading Platform (May 7, 2021); Investor Alert, N.Y. Off. of the Att’y Gen., Virtual Currency Risks (Mar. 1, 2021); Indus. Alert, N.Y. Off. of the Att’y Gen., Registration of Commodity Brokers-Dealers, Salespersons, and Investment Advisors Doing Business Relating to Virtual or “Crypto” Currency (Mar. 1, 2021); Press Release, N.Y. Off. of the Att’y Gen., Att’y Gen. James Sues to Shut Down Illegal Cryptocurrency Trading Platform and Virtual Currency, Seeks to Recoup Defrauded Funds for Thousands of Inv’rs (Feb. 17, 2021); Press Release, N.Y. Off. of the Att’y Gen., Whistleblowers Welcome: Att’y Gen. James Announces New Whistleblower Submission Sys. (Oct. 2, 2019).

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C. Bitfinex and Tether's Banking, Investment, Lending, Compliance and Customer Information Should Be Withheld Under Pub. Off. Law § 87(2)(d).

Independent of Pub. Off. Law § 87(2)(e), Bitfinex and Tether's internal policies, banking, investment, and lending information, and customer lists are exempt under Pub. Off. Law § 87(2)(d). Section 87(2)(d) exempts two related types of data: all records that are (1) "trade secrets," or (2) "submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." Pub. Off. Law § 87(2)(d). While the two categories overlap insofar as they both address competitively sensitive information, there are conceptual differences. Documents that qualify as trade secrets are exempt even if their disclosure would not cause substantial injury to the competitive position of subject enterprise. *Verizon New York, Inc.*, 137 A.D.3d 66, 73 (3d Dep't 2016) ("[I]t is wholly unnecessary" to make "a separate showing that FOIL disclosure of the trade secret would cause substantial injury to its competitive position."). And documents whose disclosure would cause substantial injury may qualify for the exemption even if the information would not otherwise qualify as a trade secret (e.g., if the information is not kept secret).

Sections III.C.1 and III.C.2, below, evaluate the relevant Requested Records under § 87(2)(d)'s two prongs—the "trade secret" and "commercial information which if disclosed would cause substantial competitive injury" exemptions—independently because the relevant factors and caselaw evaluating these exemptions differ. However, because the factors underlying each exemption overlap as relating to the confidentiality and competitive value of the information, we respectfully ask that you consider all arguments in either Section applicable to either exemption under § 87(2)(d).

1. Bitfinex and Tether's Trade Secrets Should Be Withheld Under Pub. Off. Law § 87(2)(d).

Bitfinex and Tether's internal policies, banking, investment, and lending information, and customer lists are exempt trade secrets under Pub. Off. Law § 87(2)(d). New York courts "have long recognized '[t]he importance of trade secret protection and the resultant public benefit.'" *Verizon New York, Inc. v. New York State Pub. Serv. Comm'n*, 137 A.D.3d 66, 72 (2016) (quoting *Matter of New York Tel. Co. v. Public Serv. Comm'n*, 56 N.Y.2d 213, 219 (1982)). "A trade secret, like any other secret, is nothing more than private matter; [something] known to only one or a few and kept from the general public, and not susceptible to general knowledge." *Kaunagraph Co. v. Stampagraph Co.*, 235 N.Y. 1 (Ct. App. 1923).

A record is a trade secret when it contains (1) a "compilation of information which is used in one's business, and which gives [one] an opportunity to obtain an advantage over competitors who do not know or use it" that is (2) truly secret. *Verizon New York, Inc. v. New York State Pub. Serv. Comm'n*, 137 A.D.3d 66, 72 (3d Dep't 2016). In determining whether a requested record is truly secret, courts weigh the following six factors:

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(1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken by the business to guard the secrecy of the information; (4) the value of the information to the business and its competitors; (5) the amount of effort or money expended by the business in developing the information; [and] (6) the ease or difficulty with which the information could be properly acquired or duplicated by others

Id. (quoting *Marietta Corp. v. Fairhurst*, 301 A.D.2d 734, 738 (3d Dep't 2003)).

Bitfinex and Tether's banking and investment information, lending portfolio, internal compliance policies, and customer termination lists satisfy each of these factors.

(a) Bitfinex and Tether's Banking, Investment, and Lending data are Exempt Trade Secrets.

Bitfinex and Tether's banking information, investment portfolio, and lending portfolio qualify as trade secrets because they include secret information relating to the Companies' costs, profitability, and internal allocation of assets.⁵ See *Verizon New York Inc. v. New York State Pub. Serv. Comm'n*, 46 Misc.3d 858, 879 (Sup. Ct. 2014), *aff'd*, 137 A.D.3d 66, 23 N.Y.S.3d 446 (2016) ("the costs a company incurs in operating its business may be a trade secret under FOIL . . . [p]ricing and budgetary information may also be shielded from disclosure"); *Matter of City of Schenectady v. O'Keefe*, 50 A.D.3d 1384, 1386 (3d Dep't 2008) (affirming withholding of data that included "detailed inventory of the age, cost and extent of the property" used by a utility to determine its service fees); *Matter of Catapult Learning, LLC v. New York City Dep't of Educ.*, 109 A.D.3d 731, 732 (1st Dep't 2013) (exempting "pricing, budget and insurance" information submitted in a contract proposal where disclosure would reveal "essential information about [the petitioner's] previously successful approach to bidding for educational service contracts"); *James*, 27 Misc.3d (holding OAG settlement documents, loan agreements, and other records exempt trade secrets).

Similar to the cost and pricing information exempted in *Verizon*, *City of Schenectady*, and *Catapult Learning*, and the settlement documents and loan information in *James*, Bitfinex and

⁵ The relevant Requested Records include the following: 2021.05.19 – Quarterly Report Under Settlement, Section IV. Transfers of Funds Between Bitfinex and Tether (p. 4); 2021.05.19 – Quarterly Report Under Settlement, Exhibit A – Assets Backing USDT as of March 31, 2021 (p. 5); 2021.05.19 – Quarterly Report Under Settlement, Exhibit B – Q1 Transfers of Funds Between Bitfinex and Tether; 2021.06.04 – Letter to OAG, Section IV. Account Segregation (pp. 3-4); 2021.06.04 – Letter to OAG, Exhibit A – Assets Backing USDT as of March 31, 2021 (pp. 6-7); 2021.06.25 – Letter to OAG, Section I. Commercial Paper and Reverse Repos, ¶¶ 3-6 and Bullets 1-3 (pp. 2-3); 2021.06.25 – Letter to OAG, Section III. [REDACTED] (p. 3); 2021.06.25 – Letter to OAG, Section IV. Miscellaneous, Bullets 2-4 (p. 4); 2021.06.25 – Letter to OAG, Exhibit A – Tether Lending Collateral Wallet Addresses; 2021.06.25 – Letter to OAG, Attachments A-C; BFX-THR_NYAG1304139; BFX-THR_NYAG1304140.

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Tether's banking data, including bank names, the composition of Tether's assets, investment vehicle interest rates and maturity dates, and the composition of Tether's lending portfolio are the cornerstone of Bitfinex and Tether's profitability, and in turn, those relationships and asset composition determine the customer fees that Bitfinex and Tether must charge to maintain profitability. Moreover, because Tether's lending portfolio includes the size, date, and currency of specific blockchain transactions, such transactions are traceable to specific Tether customers, thus revealing to Tether's competitors an otherwise secret cross-section of Tether's customers. This is exactly the type of information § 87(2)(d) is intended to protect, as it is a secret compilation of information that, if revealed, would provide competitors a roadmap to the source of Bitfinex and Tether's success: their financial relationships with banks that provide reliable and economical services, and the specific asset composition and investments upon which their profitability relies.

The six factors articulated in *Verizon* further weigh in favor of these data being classified as trade secrets. Bitfinex and Tether do not make public their banking relationships, other than Bitfinex and Tether's use of Deltec Bank & Trust Limited, nor do they reveal the investments upon which the Companies rely for profitability. As relating to Deltec Bank & Trust Limited, *only* the name of the bank is known to the public, and not the value of the assets it holds nor the composition of those assets. Even internally, such detailed banking and investment information is known only by Bitfinex and Tether accounting personnel and the Companies' highest-level executives.

Bitfinex and Tether's banking information, the composition of Tether's investments, and data regarding Tether's lending portfolio would also be highly valuable to competitors. As a new industry with strong consumer demand but only limited support from the financial industry, reliable banking relationships that can process high volume transactions are unquestionably cryptocurrency entities' most valuable asset because they are what allow such entities to function, and the specific financial institutions used by Bitfinex and Tether provide a significant competitive advantage in reliability and processing capacity. Moreover, all or substantially all of Tether's profitability is attributable to the specific composition of its asset classes, including its investments and lending portfolio. While high level information on Tether's finances are provided publicly, as is the case with many large companies, the highly confidential specific breakdown of investments by bank and investment vehicle, and specific lending and collateralization amounts provided to OAG in the Requested Records is an exact roadmap to the specific institutions and investments that give Bitfinex and Tether their competitive advantage, and that are intended to remain secret.

Further still, Bitfinex and Tether have spent years and a countless amount of money cultivating their current banking relationships and fine tuning their investment strategy to maximize the reliability of their services and the profitability of their asset allocation and investments, *i.e.*, their competitive advantage in the marketplace. Such information about Bitfinex and Tether could not be acquired by third parties, who instead must, as did Bitfinex and Tether, spend years cultivating their own relationships and honing their investment strategies to achieve profitability.

For these reasons, Bitfinex and Tether's banking, investment, and lending data qualifies as a trade secret under § 87(2)(d) and should be withheld.

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(b) Bitfinex and Tether's Internal U.S. Customer and Anti Money Laundering Policies are Exempt Trade Secrets.

Bitfinex and Tether's internal U.S. customer and anti-money laundering policies qualify as trade secrets.⁶ *See James*, 27 Misc.3d. In *James*, the court upheld⁷ the withholding of a custom deal form where the document was "proprietary, confidential and not publicly available," and where the petitioner expended "considerable effort and expense creating [the document] and competitors could use such information to capture the goodwill associated with adopting [the petitioner's] best practices to their competitive advantage."

These same factors apply here. Like the custom deal form in *James*, Bitfinex and Tether's internal compliance procedures and related documents were created only with considerable effort and expense, but could easily be copied—thereby vitiating Bitfinex and Tether's competitive advantage—once revealed. Moreover, revealing these compliance procedures would provide unscrupulous actors a roadmap to *evading* Bitfinex and Tether's compliance policies,⁸ thus dealing the double blow of (1) destroying Bitfinex and Tether's competitive advantage, and (2) rendering Bitfinex and Tether's policies ineffectual. This could also potentially defeat the OAG's and the Companies' shared objectives under the Settlement Agreement, which are, in part, to keep New York users *off* the Companies' platforms.

The *Verizon* factors further weigh in favor of withholding the compliance information and documentation. Neither Bitfinex nor Tether make public their internal compliance processes and procedures for the reasons articulated above, and these policies are internally distributed only to Bitfinex and Tether personnel involved in the compliance functions and high-level executives. Bitfinex and Tether's compliance documentation is valuable to the Companies' competitors not only due to the time and cost of drafting the compliance policies, but also because these compliance procedures reduce the risk and potential immense cost of enforcement actions that the Companies and their competitors alike strive to avoid. Because Bitfinex and Tether's internal compliance policies and procedures are secret, there is no avenue for competitors to acquire or duplicate the information, and while competitors can and do formulate their own internal compliance policies, they do so at considerable expense, just as Bitfinex and Tether did.

⁶ The relevant Requested Records include the following: 2021.05.19 – Quarterly Report Under Settlement, Section I. Measures to Prohibit New York Customers (pp. 2-3); 2021.06.04 – Letter to OAG, Section I. Measures to Prohibit New York Customers (p. 2); 2021.06.04 – Letter to OAG, Attachment 1 - Account On-Hold & Termination Procedure and Attachment 2 – Tether AML Program.

⁷ The court combined its analysis of documents exempt as trade secrets and documents exempt as confidential commercial information.

⁸ These documents should also be withheld under Pub. Off. Law § 87(2)(e) because their disclosure would interfere with future OAG investigations relating to U.S customer detection and termination.

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For these reasons, Bitfinex and Tether's internal compliance policies and procedures qualify as trade secrets under § 87(2)(d) and should be withheld.

(c) Bitfinex and Tether's Customer Termination Lists are Exempt Trade Secrets.

Bitfinex and Tether's customer termination lists are exempt trade secrets because the Companies' customers are not publicly known (even in the industry) and the specific types of customers Bitfinex and Tether retain are the result of the Companies' proprietary customer outreach, service, support, and other efforts.⁹ *Leo Silfen, Inc. v. Cream*, 29 N.Y.2d 387, 392–93 (1972) (“[W]here the customers are not known in the trade or are discoverable only by extraordinary efforts courts have not hesitated to protect customer lists and files as trade secrets”); *Matter of Syracuse & Oswego Motor Lines v. Frank* (Sup. Ct., Onondaga Cty., Oct. 15, 1985, Miller, J., index No. 85-5409) (holding that the respondent's list of charter customers qualified as an exempt trade secret).

As in *Leo* and *Syracuse*, Bitfinex and Tether's prior customer lists are a compilation of information used by Bitfinex and Tether to gain an advantage over competitors. While individual customers may reveal their participation on the Bitfinex and Tether platforms, the lists compiled for OAG in the Requested Records provide a cross-section of Bitfinex and Tether's former customers that, if disclosed, could be used by Bitfinex and Tether's competitors to solicit those former customers, and to gain a competitively advantageous understanding of the nature of Bitfinex and Tether's customer base. Moreover, because the customer lists contained in the Requested Records contain only customers terminated due to a U.S. nexus, such information further provides competitors practical information regarding the Companies' compliance program and the types of customers that program demands terminated.

Moreover, such information is “truly secret” under *Verizon*'s factors. Bitfinex and Tether's former customers are not known outside of the business, and such information is known only by employees involved in servicing or terminating customers, and high-level executives. As noted above, such information is highly valuable to Bitfinex and Tether's competitors, with no corresponding value to the public at large, as such information could only be used by Bitfinex and Tether's competitors for solicitation, or for harassment by detractors of Bitfinex and Tether. As with other trade secret information, it would be practically impossible for competitors to acquire or duplicate such lists of former customers, as former customer information is non-public and kept secret by Bitfinex and Tether.

⁹ The relevant Requested Records include the following: 2021.06.04 – Letter to OAG, Attachment 3 – Bitfinex Terminated Accounts and Attachment 4 – Tether Terminated Accounts.

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For these reasons, Bitfinex and Tether's prior customer lists qualify as trade secrets under § 87(2)(d) and should be withheld.

2. Bitfinex and Tether's Confidential Commercial Information Should Be Withheld Under Pub. Off. Law § 87(2)(d).

Even if the documents at issue in Section III.C.1 were analyzed as commercial information rather than trade secrets, all such documents would be exempt from disclosure because they would cause substantial injury to Bitfinex and Tether's competitive position. Pub. Off. Law § 87(2)(d) exempts from disclosure records that are "submitted to any agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." Adopting the equivalent federal FOIA provision, the court in *Encore* explained that "substantial competitive harm"

turns on the commercial value of the requested information to competitors and the cost of acquiring it through other means. Because the submitting business can suffer competitive harm only if the desired material has commercial value to its competitors, courts must consider how valuable the information will be to the competing business, as well as the resultant damage to the submitting enterprise. Where FOIA disclosure is the sole means by which competitors can obtain the requested information, the inquiry ends here.

Encore Coll. Bookstores, Inc. v. Auxiliary Serv. Corp. of State Univ. of New York at Farmingdale, 87 N.Y.2d 410, 420 (1995).

Showing substantial competitive injury does not require establishing actual competitive harm, but rather merely the existence of "[a]ctual competition and the likelihood of substantial competitive injury." *Id.* at 421 (quoting *Gulf & W. Indus. V. United States*, 615 F.2d 527, 530 (D.C. Cir. 1979)). "[T]he court need not conduct a sophisticated economic analysis of the likely effects of disclosure." *Pub. Citizen Health Rsch. Grp.*, 704 F.2d 1280, 1291 (D.C. Cir. 1983). "[E]vidence demonstrating the existence of *potential* economic harm is sufficient" to prevent disclosure. *Utah v. Dep't of the Interior*, 256 F.3d 967, 970 (10th Cir. 2001) (emphasis in original).

The relevant inquiry is "the nature of the material sought and the competitive circumstances in which" Bitfinex and Tether do business. *See Nat'l Parks & Conservation Ass'n v. Kleppe*, 547 F.2d 673, 683 (D.C. Cir. 1976). Material which would allow "competitors and customers to [gain] insight into the company's competitive strengths and weaknesses" is thus exempt from disclosure because of the risk of "substantial competitive injury." *Timken Co. v. U.S. Customs Serv.*, 491 F. Supp. 557, 559-560 (D.D.C. 1980).

In concert, these factors dictate the withholding of Bitfinex and Tether's banking and investment data, lending portfolio, internal compliance policies, and customer termination lists.

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(a) Disclosure of Bitfinex and Tether's Banking and Investment Portfolio Will Result in Substantial Competitive Injury to Bitfinex and Tether.

Bitfinex and Tether's banking information, investment portfolio, and lending portfolio should be withheld because such information would provide customers and competitors highly sensitive and substantially competitively damaging financial information that underpins Bitfinex and Tether's profitability and competitive advantage.¹⁰ See *City of Schenectady*, 50 A.D.3d 1384 (holding exempt data provided to agency by public utility tracking the cost and inventory of the utility's property assets); *Inner City Press/Cnty. on Move v. Bd. of Governors of Fed. Rsrv. Sys.*, 380 F.Supp.2d 211, 218 (S.D.N.Y. 2005), *aff'd in part, remanded in part sub nom. Inner City Press/Cnty. on the Move v. Bd. of Governors of Fed. Rsrv. Sys.*, 463 F.3d 239 (2d Cir. 2006) (exempting records related to client lists, loan amounts and terms, and other services provided to clients were properly withheld "[b]ecause a bank would not voluntarily disclose" this information and "to mandate its disclosure in this instance would impair the [Federal Reserve's] ability to collect such information ... in the future."); *Nat'l Broad. Co. v. U.S. Small Bus. Admin.*, 836 F.Supp. 121, 124 (S.D.N.Y. 1993) (holding that documents containing confidential information regarding a company's financial status and financing of the company by two licensed small business investment companies were protected from disclosure on the grounds that disclosure would harm the company's competitive position); *Burke Energy Corp. v. Dep't of Energy for U.S. of Am.*, 583 F.Supp. 507, 511 (D. Kan. 1984) (holding exempt documents containing "financial exhibits showing investments, estimated reserves, liquid values, gas values, plant revenues, operating costs, profits (or losses), and plant returns").¹¹

¹⁰ The relevant Requested Records include the following: 2021.05.19 – Quarterly Report Under Settlement, Section IV. Transfers of Funds Between Bitfinex and Tether (p. 4); 2021.05.19 – Quarterly Report Under Settlement, Exhibit A – Assets Backing USDT as of March 31, 2021 (p. 5); 2021.05.19 – Quarterly Report Under Settlement, Exhibit B – Q1 Transfers of Funds Between Bitfinex and Tether; 2021.06.04 – Letter to OAG, Section IV. Account Segregation (pp. 3-4); 2021.06.04 – Letter to OAG, Exhibit A – Assets Backing USDT as of March 31, 2021 (pp. 6-7); 2021.06.25 – Letter to OAG, Section I. Commercial Paper and Reverse Repos, ¶¶ 3-6 and Bullets 1-3 (pp. 2-3); 2021.06.25 – Letter to OAG, Section III. [REDACTED] (p. 3); 2021.06.25 – Letter to OAG, Section IV. Miscellaneous, Bullets 2-4 (p. 4); 2021.06.25 – Letter to OAG, Exhibit A – Tether Lending Collateral Wallet Addresses; 2021.06.25 – Letter to OAG, Attachments A-C; BFX-THR_NYAG1304139; BFX-THR_NYAG1304140.

¹¹ See also *Glens Falls Newspapers, Inc. v. Ctys. of Warren & Washington Dev. Agency*, 257 A.D.2d 948, 949 (3d Dep't 1999) (terms of settlement agreement resulting from dispute over contract in which power utility agreed to purchase electrical output of trash incinerator plant was commercial information subject to exemption from disclosure under Freedom of Information Law; due to highly competitive nature of power industry, disclosure of terms of settlement would be useful to competitors and would injure utility's competitive position); *Sterling Drug, Inc. v. Fed. Trade Comm'n*, 450 F.2d 698, 709 (D.C. Cir. 1971) (sales and profit data, breakdowns of sales, market share data, and confidential bid amount); *Fisher v. Renegotiation Bd.*, 355 F.Supp. 1171, 1174 (D.D.C. 1973) (business sales statistics including total net sales, total costs and expenses, operating costs, gross sales, and renegotiable sales); *Nat'l Parks and Conservation Ass'n v. Morton*, 351 F.Supp. 404, 405–06 (D.D.C. 1972) (results of audits of books, including sales statistics, inventories, holdings, expenses, statement of profits and gross receipts, securities, liabilities, and employee salaries and bonuses).

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As set forth in Section III.C.1.a, above, Bitfinex and Tether's banking relationships, investments, and lending profile and customers are the Companies' most sensitive competitive data, and courts have not hesitated to broadly withhold such financial information. Such investment, lending, and financial information is *precisely* what was withheld in *Inner City* (client lists and loan amounts and terms), *Nat'l Broad Co.* (financial status and financing) and *Burke Energy* (financial investments and estimated reserves). Moreover, similar to the withheld valuation data in *Schenectady*, Bitfinex and Tether's fees, pricing, and profitability are wholly dependent on their long-cultivated banking relationships and fine-tuned lending, collateralization, and investment strategy.

Disclosure of such documents and information would irreparably harm Bitfinex and Tether's banking relationships by revealing the allocation of assets between Bitfinex and Tether's various banks, all of whom compete with one another, and all of which is highly sensitive competitive information kept secret by Bitfinex and Tether. Moreover, the Companies' banking, investment, and lending portfolio data would provide detailed and highly confidential information to Bitfinex and Tether's competitors regarding the Companies' expected profitability and asset allocation. These data comprise the core of Bitfinex and Tether's business strategy and their relative competitive advantage in the market.

Finally, as cautioned in *Inner City*, revealing such highly sensitive information that Bitfinex and Tether would not normally disclose would impair OAG's ability to ask for such information in the future from Bitfinex and Tether or other similarly situated entities, thus imperiling OAG's investigative efforts.

For these reasons and those identified in Section III.C.1.a, above, Bitfinex and Tether's banking, investment and lending data should be withheld under Pub. Off. Law § 87(2)(d).

(b) Disclosure of Bitfinex and Tether's Internal U.S. Customer and Anti-Money Laundering Policies Will Result in Substantial Competitive Injury to Bitfinex and Tether.

Bitfinex and Tether's internal U.S. customer and anti-money laundering policies should be withheld because they are highly confidential internal documents that competitors could use to freeride on Bitfinex and Tether's efforts, and unscrupulous actors could use to short-circuit Bitfinex and Tether's compliance policies, thus causing substantial competitive injury and imperiling the OAG's and the Companies' shared objectives under the Settlement Agreement.¹² *James*, 27 Misc.3d (withholding custom deal form where the document was "not only propriety, confidential and not publicly available," but also made clear that the petitioner expended

¹² The relevant Requested Records include the following: 2021.05.19 – Quarterly Report Under Settlement, Section I. Measures to Prohibit New York Customers (pp. 2-3); 2021.06.04 – Letter to OAG, Section I. Measures to Prohibit New York Customers (p. 2); 2021.06.04 – Letter to OAG, Attachment 1 - Account On-Hold & Termination Procedure and Attachment 2 – Tether AML Program.

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“considerable effort and expense went into creating [the document] and competitors could use such information to capture the goodwill associated with adopting [the petitioner’s] best practices to their competitive advantage.”); *100Reporters LLC v. United States Dep’t of Just.*, 248 F.Supp.3d 115, 136 (D.D.C. 2017) (exempting from disclosure reports of DOJ independent corporate compliance monitor, which included materials related to the company’s compliance program).¹³

In *100Reporters*, Siemens argued that documentation relating to Siemens’ compliance programs was exempt under FOIA’s equivalent exemption because revealing the data would provide competitors with a ‘free roadmap’ of how to efficiently comply with the laws and regulations without incurring the same costs as Siemens in developing the policies. The court agreed, noting the importance companies place on compliance programs and best practices in an environment where companies “must continue to invest in compliance and training to address emerging risks,” and thus withheld the requested data. *Id.* at 140-41.

Bitfinex and Tether’s compliance documents should be withheld just as Siemens’ compliance documentation was withheld in *100Reporters*. As further described in Section III.C.1.b, above, disclosure of Bitfinex and Tether’s internal compliance documentation would cause substantial competitive injury by providing the Companies’ competitors the very type of “free roadmap” that was withheld in *100Reporters*. And like both the compliance materials in *100Reporters* and the custom deal form in *James*, these policies were created at considerable cost and effort by Bitfinex and Tether.

Moreover, disclosure of the compliance materials would *also* cause substantial competitive injury to Bitfinex and Tether by rendering their existing compliance policies ineffective. These requested policies contain the specific steps taken by Bitfinex and Tether to identify users that are violating Bitfinex and Tether’s terms of services or other applicable laws in order to terminate such customers from the platform. Were these documents disclosed, such users would learn what to do to avoid Bitfinex and Tether’s compliance processes, thus damaging Bitfinex and Tether’s ability to maintain effective compliance policies as compared to those of its competitors.

For these reasons and those identified in Section III.C.1.b, above, Bitfinex and Tether’s U.S. Customer and Anti-Money Laundering Policies should be withheld under Pub. Off. Law § 87(2)(d).

(c) Disclosure of Bitfinex and Tether’s Customer Termination Lists Will Result in Substantial Competitive Injury to Bitfinex and Tether.

¹³ See also *Encore Coll. Bookstores, Inc. v. Auxiliary Serv. Corp. of State Univ. of New York at Farmingdale*, 87 N.Y.2d 410, 421 (1995) (holding exempt from disclosure a Barnes & Noble booklist because it could be used by competitors to sell the same books to students, resulting in potential lost profits).

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Bitfinex and Tether's customer termination lists should be withheld under Pub. Off. Law § 87(2)(d) because disclosure would provide Bitfinex and Tether's competitors a mechanism to solicit the Companies' former customers, and would provide a highly sensitive and confidential cross section of Bitfinex and Tether's customer base, the disclosure of which would cause substantial competitive injury.¹⁴ See *Inner City Press/Cnty. on Move v. Bd. of Governors of Fed. Rsrv. Sys.*, 380 F.Supp.2d 211, 214 (S.D.N.Y. 2005), aff'd in part, remanded in part sub nom. *Inner City Press/Cnty. on the Move v. Bd. of Governors of Fed. Rsrv. Sys.*, 463 F.3d 239 (2d Cir. 2006) (exempting records related to client lists, loan amounts and terms, and other services provided to clients "[b]ecause a bank would not voluntarily disclose" this information and "to mandate its disclosure in this instance would impair the [Federal Reserve's] ability to collect such information ... in the future.").

As noted in Section III.C.1.c, above, while individual customers may reveal their participation on the Bitfinex and Tether platforms, the terminated customer lists compiled for OAG in the Requested Records provides a cross-section of Bitfinex and Tether's former customers that, if disclosed, could be used by the Companies' competitors to solicit those former customers, and to gain a competitively advantageous understanding of the nature of Bitfinex and Tether's customer base. Moreover, while such information is highly valuable to Bitfinex and Tether's competitors, it has no corresponding value to the public at large, as such information could practically only be used by Bitfinex and Tether's competitors for solicitation, to gain insight into Bitfinex and Tether's customer base, or for individual harassment by detractors of Bitfinex and Tether. This type of information is exactly what was held to be exempt from disclosure in *Inner City*, and should similarly be withheld here.

D. The Names of Former Bitfinex and Tether Customers and the Names of Tether Personnel Should Be Withheld Under Pub. Off. Law § 87(2)(b).

The names of former Bitfinex and Tether customers and the names of Tether personnel are exempt private personal information. "FOIL broadly protects the dissemination of records that 'if disclosed would constitute an unwarranted invasion of personal privacy.'" *James*, 27 Misc.3d at 13 (quoting *New York Committee for Occupational Safety and Health v. Michael Bloomberg*, 72 A.D.3d 153, 160 (1st Dep't 2010)).

Pub. Off. Law § 89(2)(b) provides a non-exclusive list of examples of qualifying personal information, including "lists of names and addresses if such lists would be used for solicitation or fund-raising purposes," "disclosure of information of a personal nature when disclosure would result in economic or personal hardship to the subject party and such information is not relevant

¹⁴ The relevant Requested Records include the following: 2021.06.04 – Letter to OAG, Attachment 3 – Bitfinex Terminated Accounts and Attachment 4 – Tether Terminated Accounts.

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to the work of the agency requesting or maintaining it,” or “disclosure of information of a personal nature reported in confidence to an agency and not relevant to the ordinary work of such agency.

Where no statutorily enumerated category applies, the Court must “balanc[e] the privacy interests at stake against the public interest in disclosure of the information.” *Matter of New York Times Co. v. City of New York Fire Dep’t*, 4 N.Y.3d 477, 485 (Ct. App. 2005). “What constitutes an unwarranted invasion of personal privacy is measured by what would be offensive and objectionable to a reasonable [person] of ordinary sensibilities.” *Matter of Humane Soc’y of U.S. v. Fanslau*, 54 A.D.3d 537, 538 (3d Dep’t 2008) (internal quotations marks omitted).

1. The Names of Former Bitfinex and Tether Customers are Exempt Private Personal Information.

The usernames and names of former Bitfinex and Tether customers should be withheld as private personal information.¹⁵ See *James*, 27 Misc.3d at 14 (exempting all loan borrower personal information including, *inter alia*, borrower names); *Hearst Corp. v. State*, 24 Misc.3d 611, 625 (Sup. Ct., Albany Cnty. 2009) (withholding employee birthdays).

In *James*, the court explained that the loan borrowers “were presumably not conducting their personal or professional business with the expectation that it would be made public,” had no expectation that their information would be publicly disclosed, and “had a reasonable expectation of privacy in their business dealings with [the lender].” 27 Misc.3d 1223(A) at 14. The court concluded that all borrower personal information, including borrower names, was exempt under § 87(2)(b) as an unwarranted invasion of personal privacy. *Id.*

So too here. The requested records contain the names and usernames of former Bitfinex and Tether customers who had a reasonable expectation of privacy regarding their participation in the platforms, and who were conducting their financial business with the expectation that it would not be made public. Moreover, there is no public interest in the disclosure of Bitfinex and Tether’s former customers, other than for the solicitation of such customers by competitors, which is exempt under § 89(2)(b), or for the improper harassment of such former customers by Bitfinex and Tether’s detractors, which under any balancing test would be “offensive and objectionable to a reasonable [person] of ordinary sensibilities.” *Matter of Humane Soc’y of U.S.*, 54 A.D.3d 537 at 863 (internal quotations marks omitted).

For these reasons, the Requested Records containing Bitfinex and Tether’s former customer information should be withheld under Pub. Off. Law § 87(2)(b).

¹⁵ The relevant Requested Records include the following: 2021.06.04 – Letter to OAG, Attachment 3 – Bitfinex Terminated Accounts and Attachment 4 – Tether Terminated Accounts.

(Continued...)

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2. Tether's Lending Portfolio is Exempt Because Its Disclosure Would Reveal the Names of Existing Tether Customers

Tether's lending portfolio should be withheld under Pub. Off. Law § 87(2)(b) because its disclosure would reveal the names of current Tether customers and would thus be an unwarranted invasion of personal privacy.¹⁶ As noted in Section III.C.1.a, because Tether's lending portfolio includes the size, date, and currency of specific blockchain transactions, such transactions are traceable to specific Tether customers.

For the reasons stated in section III.D.1, the Requested Records containing Tether's lending portfolio should be withheld Pub. Off. Law § 87(2)(b).

3. The Names of Tether Personnel are Exempt Private Personal Information.

The names of Bitfinex and Tether personnel should also be exempt under § 89(2)(b).¹⁷ Similar to the data described in Sections III.D.1 and III.D.2, such information serves no public interest other than facilitating the harassment of Bitfinex and Tether personnel by Bitfinex and Tether's detractors. For this reason, Bitfinex and Tether personnel names should be withheld.

* * *

We appreciate your detailed consideration of the preceding legal analysis. In addition, we make the following procedural requests in connection with your consideration of these issues:

- We request an opportunity to review and address any materials or information of a background or factual nature that the OAG may consider as favoring release of information that we are seeking to protect—if there are any—before OAG makes any final decision in reliance upon such materials or information.
- We request an opportunity to meet with the administrative decision-maker(s) to explain our position and to address their questions or concerns, if any.
- We request an opportunity to provide further explanation of our objection regarding any specific items of information for which OAG disagrees with the objection.

¹⁶ The relevant Requested Record is 2021.06.04 – Letter to OAG, Attachment 5 – Tether Lending.

¹⁷ The relevant Requested Records include the following: 2021.06.04 – Letter to OAG, Section I. Measures to Prohibit New York Customers, ¶¶ 2-3 (p. 2); 2021.06.25 – Letter to OAG, Section IV. Miscellaneous, Bullet 1 (p. 4).

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- We request that we be informed of OAG's determinations concerning public release of this information. If and when OAG makes a final decision to disclose any information that we object to releasing, we request that you provide written notification of that decision at least ten business days before the intended release date, in order that we may seek judicial relief to prevent disclosure of such information.

If OAG receives any other requests for Bitfinex and Tether's information, we request an opportunity to submit factual and legal grounds opposing release. The above-listed procedural requests would also apply in that event.

This letter is being submitted voluntarily. The information contained in this letter is customarily kept confidential by Bitfinex and Tether. For the reasons stated above, release of this letter would likely cause substantial competitive harm to Bitfinex and Tether, would reveal trade secrets held by Bitfinex and Tether, would interfere with a law enforcement investigation, and would reveal the personal information of Bitfinex and Tether personnel and third parties. Thus, this letter is protected from public release by Pub. Off. Law § 87(2)(b), (d), and (e). In the event OAG either receives a request for disclosure of this letter and/or the attachment, or otherwise considers making a decision to release them, Bitfinex and Tether request immediate notice of such request or possible decision so that we may have an opportunity to submit factual and legal grounds in opposition to release.

If you have any questions, please do not hesitate to contact me.

Sincerely,

/s/ Charles Michael

Charles Michael

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